Supreme Court, U.S.
FILED
041367 FEB 7 - 2005
OFFICE OF THE CLERK

(2)

No. _____

In The
Supreme Court of the United States

KENIA MARITZA CINTRÓN PARRILLA, ET AL,

Pro Se Petitioners,

v.

ELI LILLY INDUSTRIES, INC., ET AL,

Respondents.

PETITION FOR WRIT OF CERTIORARI

EXHIBITS

KENIA M. CINTRÓN PARRILLA
MIGUEL A. GARCÍA MÉNDEZ
(Pro se)
P. O. Box 388
Naguabo, Puerto Rico 00718
Telephone: 787-874-1359

Exh. 1

EXHIBIT 1

PERMISOS DE AUSENCIA

La sección **Su Paga** de este libro le provee información detallada sobre licencia militar para las cuales se puede recibir pago.

Licencia Educacional

Una licencia sin sueldo le puede ser concedida a un asociado regular de buen, historial, luego de un año de empleo, que desee continuar con estudios relacionados con su trabajo. Todos los beneficios de la compañía cesan en licencias de más de 90 días. La única excepción es el Plan de Ahorros del asociado, en el cual usted podrá continuar en una base suspendida (sus ahorros continuarían siendo objeto de la experiencia de inversi6n del fondo o fondos en los que usted haya invertido).

El regreso a la compañía dependerá de la necesidad de la compañía. Por lo tanto, es prudente mantener a su área informada de todos los desarrollos y progresos mientras esté en licencia educacional.

Licencia Personal

Una ausencia sin paga podrá ser concedida a un asociado para resolver una situaci6n de carácter personal. La duración de este tipo de ausencia estará sujeto a la aprobaci6n de su área. Todos los beneficios de la compañía cesan en licencias de más de 90 días.

Licencia Medico Familiar

La Ley de Licencia Médica y Familiar de 1993 le permite al asociado ausentarse del trabajo por un período de hasta 12

semanas al año para atender condiciones medicas y/o de familia, según se detallan a continuación.

Elegibilidad

- Asociado ha estado empleado por Lilly por lo menos 52 semanas antes del comienzo de la licencia.
- Asociado ha trabajado en Lilly al menos 1250 horas durante los 12 meses anteriores a la fecha del comienzo de la licencia.

Circunstancias en las que se otorga la licencia

- Nacimiento, puesta en adopción o custodia legal de un niño(a)
- Condición de salud seria de cónyuge, hijo(a), madre o padre
- Condición de salud seria del asociado

Duración de la licencia medico familiar

- Máximo de 12 semanas al año
- Si ambos cónyuges están empleados por Lilly, tendrán derecho *conjunto* de 12 semanas de licencia para el cuidado del niño(a)
- Por razón del nacimiento, adopción o custodia legal de un niño(a), deberá tomarse dentro de los primeros 12 meses luego del nacimiento o ubicación del niño(a) en adopción o custodia.

Relación con otras licencias

Para condiciones provistas por otras licencias o beneficios de Lilly, se requerirá al asociado que utilice primero su tiempo acumulado por concepto de esas licencias (vacaciones, enfermedad, maternidad, otras

condiciones de enfermedad extendida, Fondo) que se acreditarán como parte de la licencia medico familiar. Este período no se contará como ausencia para propósitos de revisión de salario, evaluaciones, etc.

Beneficios durante la licencia medico familiar

Los beneficios de cubierta de salud se mantendrán durante la licencia. En caso de licencia sin paga, el asociado y Lilly harán los arreglos pertinentes para la porción usual a ser pagada por el asociado.

Procesos Administrativos

- Si previsible, el asociado deberá notificar a su supervisor de la necesidad de esta licencia, por lo menos 30 días antes de su comienzo. Si el asociado no cumple con este requisito, Lilly puede negar la toma de esta licencia.
- Lilly requerirá una certificaci6n médica (cuya forma esta disponible en el área de Recursos Humanos) emitida por un proveedor del cuidado de la salud donde de fe de la condición de salud seria del familiar del asociado o del asociado mismo.
- Lilly puede requerir una segunda certificación, a su costo, de un medico escogido por la compañía. En caso de divergencia, una tercera, certificación (por un médico seleccionado par ambos, el asociado y la compañía) será final.
- Lilly requerirá recertificaciones médicas (usando forma disponible en Recursos Humanos) por:

  -período no mayor de 30 días

  -período menos de 30 días si el asociado solicita extensión de la licencia, si Lilly duda de la validez

de las certificaciones, cambios en las condiciones descritas en el certificado original, etc.

- Lilly requerirá al asociado que regrese a trabajar luego de esta licencia, certificación de que esta apto para retornar al trabajo. Lilly puede negar el regreso al trabajo mientras dicha certificación no se haya sometido.
- Lilly requerirá certificación de la adopción o custodia legal de un niño(a) a la agencia relacionada.

RENUNCIA

Si un asociado decide abandonar la Compañía, debe notificarlo a la mayor brevedad posible.

Se deberá devolver toda la propiedad de la Compañía, incluyendo uniformes, llaves, tarjetas de identificación (de asociado, seguro medico) y el Manual del Asociado (este libro).

Cuando un asociado renuncia se le recuerda tomar la acción que sea necesaria en relación con su inversión en el Plan de Ahorros de asociados. Se le debe dar consideración, además, al reemplazo de las pólizas de Segura de Salud según se describen en la sección. de este libro de **Su Seguro de Salud y de Vida.**

Exh. 5

TRANSLATION

AUTHORIZATION FOR LEAVE OF ABSENCE

Under section **Your Salary** of this book, detailed information is provided regarding military leave for which you can receive payment.

Educational Leave

Leave without pay can be granted to a regular associate with a good record, after one year of employment, who wishes to continue with his work-related studies. All the benefits of the company cease in leaves of more than 90 days. The associates' Savings Plan is the only exception, in which you may continue on a suspended basis (your savings will continue being object of the fund investment experience or funds in which you have invested).

The return to the company shall depend on the needs of the company. Therefore, it is prudent to keep your area informed of all the developments and progress while you are on educational leave.

Personal Leave

An absence without pay may be granted to an associate to resolve a personal situation. The duration of this type of absence, will be subject to your area approval. All the company benefits cease in leaves of over 90 days.

Medical and Family Leave

The Medical and Family Leave Act of 1993, allows an associate to be absent from his job for a period of time up to 12 weeks per year to attend to medical and/or family conditions, as detailed below:

Eligibility

- Associate has been employed by Lilly at least 52 weeks before the leave commenced.
- Associate has been working at Lilly at least 1250 hours during the12 months prior to the date of the commencement of leave.

Circumstances in Which Leaves are Granted

- Birth, placement in adoption or legal custody of a child
- Serious health condition of spouse, son, daughter, mother or father
- Serious health condition of associate

Duration of Medical and Family Leave

- Maximum of 12 weeks per year
- If both spouses are Lilly employees, they shall be entitled jointly to 12 weeks of leave for the care of the child.
- For reason of birth, adoption or legal custody of a child, it must be taken within the first 12 months after the birth or placement in adoption or custody of the child.

Relation with Other Leaves

For conditions provided by other leaves or Lilly benefits, the associate will be required to use first his/her accumulated time for those other leaves (vacation, illness, maternity, other conditions of extended illness, State Insurance Fund) that will be credited as part of the medical and family leave. This period will not count for the purpose of salary review, evaluations, etc.

Benefits during the Medical and Family Leave

The health insurance coverage benefits shall be retained during the leave. In the event of leave without pay, the associate and Lilly shall make the pertinent arrangements for the portion to be paid by the associate.

Administrative process

- If foreseeable, the associate must notify his supervisor about the need for this leave, at least 30 days before its commencement. If the associate fails to comply with this requirement, Lilly can deny the authorization to take this leave.
- Lilly will require a medical certificate (form which is available in the Human Resources Area) issued by a health provider in which he certifies the serious medical condition of the family member or of the associate himself.
- Lilly can require a second certificate, at his own cost, from a physician selected by the company. In the event of divergence, a third certificate (from a physician selected by both the associate and the company) will be final.
- Lilly will require medical re-certifications (using form available in Human Resources) for:
  - a period not greater than 30 days
  - a period less than 30 days if the associate applies for an extension of leave, if Lilly has doubts regarding the validity of the certificates, changes in the conditions described in the original certificate, etc.

- Lilly will require the associate to return to his job after this leave, certificate that he is able to return to work. Lilly can deny the return to work until this certificate is submitted.
- Lilly will require the certificate of adoption or legal custody of a boy (girl) from the related agency.

RESIGNATION

If an associate decides to abandon the Company, he/she must notify it as soon as possible.

All the Company property must be returned, including uniforms, keys, identification cards (of associate, medical insurance) and the Employee Manual (this book).

When an associate resigns he/she is reminded to take the necessary action regarding his/her investment in the associates' Savings Plan. Consideration should be given, as well, to the replacement of the Health Insurance Policies, as described in the section of this book, **Your Health and Life Insurance**.

United States District Court
Fo4r the District of Puerto Rico
-CERTIFIED-
To be a correct translation made
and/or submitted by the interested party
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Exh. 9

EXHIBIT 2

July 7, 2004

To: Ms. Yvette Richardson
Court Reporter
U. S. District Court
District of Puerto Rico
150 Carlos Chardon Avenue
Hato Rey, PR 00918-1767

From: Kenia M. Cintrón
P. O. Box 388
Naguabo, PR 00718-0388

Re: Civil Case No. 3:99-01229-JAF/Transcript Order

Dear Ms. Richardson,

On July 7 2004, we went to the Puerto Rico District Court in order to inform that our postal address and telephone numbers have changed. We have been instructed by the court assistance to contact you directly. Since several times we have tried to contact you and we have never received a response back from you, we decided to send you this letter. Our new postal address and telephone number is as follows: P. O. Box 388

Naguabo, PR 00718-0388

Tel. (787) 874-1359

We are also interested to know the status regarding the requested transcripts, since we have not received any

information about them yet. Attached we are sending copy of the Transcript Order[1].

If you have any doubt you can contact us at the above address and phone number.

Sincerely,

/s/ Kenia M. Cintrón /s/ Miguel A. García Méndez

Kenia M. Cintrón and Miguel A. García Méndez

7002 0860 0008 6601 8394

[1] See APPENDIX AN of The Petition for Writ of Certiorari.

Exh. 12

EXHIBIT 3

Certified Letters Numbers: 7002 0860 0008 6608 7314
7002 0860 0008 6601 8370

November 24, 2004

To: Ms. Yvette Richardson
Court Reporter
U. S. District Court
District of Puerto Rico
150 Carlos Chardon Avenue
Hato Rey, PR 00918-1767

Cc: Laura Rivera
Operations Manager
U. S. District Court
District of Puerto Rico
150 Carlos Chardon Avenue
Hato Rey, PR 00918-1767

From: Kenia M. Cintr6n and Miguel A. Garcia Mendez
P. O. Box 388
Naguabo, PR 0O718~O388

Re: TRANSCRIPT ORDERS OF HEARING HELD ON JULY 31, 2002 AND MAY 16, 2003 PUERTO RICO DISTRICT COURT CIVIL CASE NO. 3:99- 01229-JAF COURT OF APPEAL CASE NO. 04-1536

Dear Ms. Richardson,

On November 22, 2004, we called to the United States Court of Appeals for the First Circuit and contacted Ms. Marilyn Camargo from the Clerk's Office in order to

request copy of the transcript of the hearings held on July 31, 2002 and May 16, 2003 in compliance to the U.S. Court of Appeals for the First Circuit Orders entered on July 12, 2004 and September 23, 2004 in order to appeal to the United Stated Supreme Court. Ms. Marilyn Camargo informed us that none of the transcripts were ever filed in the U.S. Courts of Appeals for the First Circuit and that she had checked with the U.S. District Court of Puerto Rico and the transcripts were never filed in the District Court neither. Then, Ms. Marilyn Camargo instructed us to contact you directly.

The day after, on November 23, 2004, we tried to contact you and left you a phone message (at telephone no. 787-772-3476) regarding this issue but, as in the past several times, that we have tried to contact you, we have not received any response back from you neither.

The U.S. Supreme Court appeal date is very close and these transcripts are extremely important for our case before the Supreme Court as well they are before the Court of Appeals for the First Circuit, in which they were never filed. For such reasons, we decided to send you this letter in which we are requesting you to inform us how can we obtain copy of these transcripts that you were supposed to file in the U.S. Court of Appeals for the First Circuit by August 30, 2004 according to the July 12, 2004 Order, and not later than September 30, 2004 according to the September 23, 2004 Order. Attached we are sending again a copy of the Transcript Order[2] and copies of the July 12,

[2] See EXHIBIT 2 of The Petition for Writ of Certiorari.

2004 and September 23, 2004 Court of Appeals for the First Circuit Orders.[3]

You can contact us to the below address and telephone number as follows:

P. O. Box 388

Naguabo, PR 00718-0388

Tel. (787) 874-1359

Sincerely

/s/ Kenia M. Cintrón /s/ Miguel A. García Méndez

Kenia M. Cintrón Parrilla and Miguel A. García Méndez

[3] See APPENDIX AS and APPENDIX AT of The Petition for Writ of Certiorari.

Exh. 17

EXHIBIT 4

Certified Letter Numbers: 7002 0860 0008 6608 7123
7002 0860 0008 6608 8130[1]

January 27, 2005

To: Mrs. Lida Egele
Operations Manager
U. S. District Court
District of Puerto Rico
150 Carlos Chardon Avenue
Hato Rey, PR 00918-1767
Tel. 787-772-3060

cc: Ms. Yvette Richardson Court Reporter
U. S. District Court
District of Puerto Rico
150 Carlos Chardon Avenue
Hato Rey, PR 00918-1767
Tel. 787-772-3476

From: Kenia M. Cintrón and Miguel A. García Méndez
P. O. Box 388
Naguabo, PR 00718-0388

RE: TRANSCRIPT REQUEST FOR ORDERS OF HEARING HELD ON JULY 31, 2002 AND MAY 16, 2003, PUERTO RICO DISTRICT COURT CIVIL CASE NO. 3:99-01229-JAF COURT OF APPEAL FOR THE FIRST CIRCUIT CASE NO. 04-1536

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[1] There is an error in the number the correct number is 7002 0860 0008 6608 7130

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. Yvette Richardson
Court Reporter
U.S. District Court
District of Puerto Rico
150 Carlos Chardon Avenue
Hato Rey, P.R. 00918-1767

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X C. Santos ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 7-8

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 0860 0008 6601 8394

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Exh. 11

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Laura Rivera
Operations Manager
U.S. District Court
District of Puerto Rico
150 Carlos Chardon Avenue
Hato Rey, PR 00918-1767

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery
11-29

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7002 0860 0008 6608 7314

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

Exh. 15

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. Yvette Richardson
Court Reporter
U.S. District Court
District of Puerto Rico
150 Carlos Chardon Avenue
Hato Rey PR 00918-1767

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☑ Agent ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery 11-30

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 0860 0008 6601 8370

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Exh. 16

Exh. 18

Dear Mrs. Lida Egele,

On January 13, 2005, you called us regarding our November 24, 2004 certified letter numbers: 7002 0860 0008 6608 7314 and 7002 0860 0008 6601 8370, sent to Ms. Yvette Richardson and Mrs. Laura Rivera and pursuant to the Transcript Orders of Hearing Held On July 31, 2002 and May 16, 2003 at Puerto Rico District Court Civil Case No. 3:99-01229-JAF and Court of Appeal Case No. 04-1536. See, copy enclosed.[2] In the conversation, you informed us that: 1) Mrs. Laura Rivera is not working as Operations Manager, and that you are now in charge of such administrative responsibilities, 2) that you had no idea why the transcripts were never filed, 3) that the transcript for the July 31, 2002 allegedly and apparently were never taken and, 4) that you would make the arrangement with Ms. Yvette Richardson in order to require from her to prepare May 16, 2003 transcript and to contact us for the payment arrangement. As we informed you, we are proceeding by our self, pro-se, and will be in charge to pay for the transcript.

As it happened before, Ms. Yvette Richardson has not contact us, as up today. And as we also stated in our November 24, 2004 letter, the U.S. Supreme Court appeal due date is very close and these transcripts are extremely important for our case before the Supreme Court. For such reason, we have decided to send you this letter in which we are again requesting you to inform <u>us how we can obtain copy of these transcripts</u> that are supposed to be filed.

---

[2] See EXHIBIT 3 of The Petition for Writ of Certiorari.

We very respectfully implore for you help. You can contact us to the below address and telephone number as follows:

P. O. Box 388
Naguabo, PR 00718-0388
Tel. (787) 874-1359

Sincerely,

/s/ Kenia M. Cintrón /s/ Miguel A. García Méndez
Kenia M. Cintrón Parrilla and Miguel A. García Méndez

Exh. 22

EXHIBIT 5

IN THE DISTRICT COURT OF APPEALS
FOR THE FIRST CIRCUIT

DOCUMENT REPRODUCTION REQUEST

Case Number: 04-1536

Case Name: Cintrón-Parrilla, et al v. Lilly, et al

Name of Person Requesting Reproduction of Documents:
Kenia M. Cintrón Parrilla

Signature: Date: /s/

Date: December 8, 2004

Address: P.O. Box 388
Naguabo, PR 00718

Telephone number: 787-874-1359

Please, reproduce and send copies of the following documents:

From the Court of Appeal:

Filing date	Description of Document	Pages: 7
4/30/04	Appearance filed by Carl E. Schuster	
4/30/04	Attorney Lourdes C. Hernandez-Venegas added to case	
4/30/04	Appearance filed by Lourdes C. Hernandez-Venegas	
7/12/04	Fax Motion filed by court reporter Yvette Richardson to extend time	
9/21/04	Court Reporter Transcript Notice Issue	
9/22/04	Motion filed by court reporter Yvette Richardson to extend time	

10/6/04 Public Note: Request for extension of time to file transcript filed by Court Reporter Yvette Richardson

From the District Court (District case no. 99-cv-01229)

Pages: 67

Filing date	Docket No.	Description of Document
09/25/2001	47	Proposed pre-trial order
09/26/2001	47	Pretrial Conference held before Judge Jose A. Fuste
09/28/2001	47	Endorsed Order approving pre-trial order

Total Pages: 74

Amount sent to pay for document copies: $37.00

Exh. 26

EXHIBIT 6

[1]ATTN: MARILYN FAX. JAN. 19, 2005
1-617-748-9056

IN THE DISTRICT COURT OF APPEALS
FOR THE FIRST CIRCUIT

DOCUMENT REPRODUCTION REQUEST

Case Number: 04-1536

Case Name: Cintrón-Parrilla, et al v. Lilly, et al

Name of Person Requesting Reproduction of Documents:
Kenia M. Cintrón Parrilla

Signature: Date: /s/

Date: December 8, 2004

Address: P.O. Box 388
Naguabo, PR 00718

Telephone number: 787-874-1359

Please, reproduce and send copies of the following documents:

From the Court of Appeal:

Filing date	Description of Document	Pages: 7
4/30/04	Appearance filed by Carl E. Schuster	
4/30/04	Attorney Lourdes C. Hernandez-Venegas added to case	
4/30/04	Appearance filed by Lourdes C. Hernandez-Venegas	
7/12/04	Fax Motion filed by court reporter Yvette Richardson to extend time	

[1] The header fax information was handwritten.

Exh. 27

9/21/04	Court Reporter Transcript Notice Issue
9/22/04	Motion filed by court reporter Yvette Richardson to extend time
10/6/04	Public Note: Request for extension of time to file transcript filed by Court Reporter Yvette Richardson

From the District Court (District case no. 99-cv-01229)

Pages: 67

Filing date	Docket No.	Description of Document
09/25/2001	47	Proposed pre-trial order
09/26/2001	47	Pretrial Conference held before Judge Jose A. Fuste
09/28/2001	47	Endorsed Order approving pre-trial order

Total Pages: 74

Amount sent to pay for document copies: $37.00

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mrs. Lida Egele
Operations Manager
U.S. District Court
District of Puerto Rico
150 Carlos Chardon Avenue
Hato Rey, P.R. 00918-1767

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7002 0860 0008 6608 7123

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

00918+1703

Exh. 20

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. Yvette Richardson
Court Reporter - G-40
U.S. District Court
District of Puerto Rico
150 Carlos Chardon Avenue
Hato Rey, P.R. 00918-1767

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X C. Lauton ☐ Agent ☐ Addressee

B. Received by (*Printed Name*) | C. Date of Delivery 1-31

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (*Extra Fee*) ☐ Yes

2. Article Number (*Transfer from service label*) 7002 0860 0008 6608 7130

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

Exh. 21

CUSTOMER'S RECEIPT

DO NOT SEND THIS RECEIPT FOR PAYMENT
KEEP IT FOR YOUR RECORDS

9267693253 7 041207 007250 **37*00

SERIAL NUMBER	YEAR, MONTH, DAY	POST OFFICE	U.S. DOLLARS AND CENTS

PAY TO: Clerk U.S. Court of Appeals

CHECKWRITER IMPRINT AREA

ADDRESS: Office of the Clerk U.S. Court of Appeals
5th, Eighth and Eighth Circuits
Hamilton Place Building

FROM: Kane & Cotton

ADDRESS: PO Box 388

COD NO. OR USED FOR: Bond Mandate

Dorado, PR 00744-0388

This receipt may be presented for payment of money order by any postmaster within one year from date shown above. If money order is not paid within 30 days after the money order purchase date provided the money order has not been lost

An inquiry Form 6401 may be filed at any time for a fee. A reimbursement will not be issued until 60 days after the money order purchase date provided the money order has not been lost

Exh. 24

BEST AVAILABLE COPY

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Office of the Clerk
United States Court of Appeals
John Joseph Moakley U.S. Courthouse
1 Courthouse Way 2500
Boston, Massachusetts 02210

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

RECEIVED
DEC 13 2004
By: U.S. Court of Appeals

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 0860 0008 6601 8356

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

Exh. 25

Exh. 28

hp office jet 7130
impresora/*fax*/escáner/copiadora
Méndez

Informe historial fax para
Miguel A. García

(787) 874-1359
Ene 19 2005 5:07pm

Última transacción

Fecha	Hora	Tipo	Identificación	Duración	Págs.
Ene 19	5:06pm	Fax env.	16177489056	0:40	1

Resultado
1 Aceptar

TRANSLATION[2]

hp office jet 7130
printer/*fax*/scanner/copier
Méndez

Fax Report for
Miguel A. García

(787) 874-1359
Jan 19 2005 5:07pm

Last transaction

Date	Time	Type	Identification	Duration	Pages
Jan 19	5:06pm	Fax sent	16177489056	0:40	1

Result
1 OK

[2] Our translation

Exh. 29

EXHIBIT 7

P. O. Box 388
Naguabo, PR 00718-0388

Kenia M. Cintrón

Phone: 787-874-1359
Fax: 787-874-1359

Fax Transmittal Form

To	From
ATTN. Mrs. Marilyn	Kenia. M. Cintrón
UNITED STATES COURTS OF APPEALS FOR THE FIRST CIRCUIT	Phone: 787-874-1359
Tel. no..: 1-617-748-9026	Fax: 787-874-1359
Fax no.: 1-617-748-9056	

Date sent: January 27, 2005

Number of pages including this cover page: 2

URGENT

Message:

Case No. 04-1536

Mrs. Marilyn,

Per our conversation on January 19, 2005, we never received the reproduction of documents requested "From Court of Appeals" on December 8, 2004. See, enclosed Document Reproduction Request. As I also informed you, we already obtained the document reproduction "From the District Court".

On January 19, 2005, you instructed me to fax you the enclosed Document Reproduction Request, which I did, in order for you to sent us the reproduction of the requested

documents We will appreciate if you can call us and let us know the status of such request by contact us at:
Tel. no.: 787-874-1359 or, send the requested documentation to:
P. O. Box 388
Naguabo, PR 00718-0388.
If you have any doubt, do not hesitate to contact us.
Sincerely,

/s/ Kenia M. Cintrón
Kenia M. Cintrón

Exh. 31

hp office jet 7130
impresora/*fax*/escáner/copiadora

Informe historial fax para
Miguel A. García Méndez
(787) 874-1359
Ene 27 2005 5:00pm

Última transacción

Fecha	Hora	Tipo	Identificación	Duración	Págs.
Ene 27	4:59pm	Fax env.	16177489056	0:50	2

Resultado
1 Aceptar

TRANSLATION[1]

hp office jet 7130
printer/*fax*/scanner/copier

Fax Report for
Miguel A. García Méndez

(787) 874-1359
Jan 27 2005 5:00pm

Last transaction

Date	Time	Type	Identification	Duration	Pages
Jan 27	4:59pm	Fax sent	16177489056	0:50	2

Result
1 OK

---

[1] Our Translation

(1)

No. 04-1361

In The
Supreme Court of the United States

KENIA MARITZA CINTRÓN PARRILLA, ET AL,

Pro Se Petitioners,

v.

ELI LILLY INDUSTRIES, INC., ET AL,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit

PETITION FOR WRIT OF CERTIORARI

KENIA M. CINTRÓN PARRILLA
MIGUEL A. GARCÍA MÉNDEZ
(Pro se)
P. O. Box 388
Naguabo, Puerto Rico 00718
Telephone: 787-874-1359

QUESTIONS PRESENTED

1. On August 14, 2002, the Honorable District Court for the District of Puerto Rico filed an Order in which stated:

> "The joint motion seeking voluntary dismissal is approved under the term of the sealed agreement.
>
> This case is closed, subject to be reopened for the limited review purposes contemplated by the parties."

On July 1, 2003, the Honorable District Court filed an Order regarding Plaintiffs-Petitioners request to annul the settlement agreement due Defendants-Respondents breach of agreement in which stated:

> "The Settlement agreement requires full exhaustion of Eli Lilly's Disability Plan procedures. Until this is accomplished, the court will not consider relieving any party from the terms of the settlement."

On February 25, 2004, the Honorable District Court made the final Judgment for all the pending orders pursuant to the case when filed an Order in which stated:

> "This case is closed for all purposes."

Whether the Honorable Judges of the Court of Appeal for the First Circuit erred when dismissed the appeal August 14, 2002 and July 1, 2003 orders as untimely when the Notice of Appeal was timely filed on March 22, 2004 and within the 30 days time period. Federal Rules of Civil Procedure Rule 54(b).

2. On September 25, 2003, Petitioners Attorneys timely filed a REQUEST FOR REVIEW AND PETITION FOR ORAL ARGUMENT ("Request for Review").

On November 24, 2003, the District Court entered an Order pursuant to Petitioners' Request for Review in which only stated the word "Denied'.

On December 8, 2003, within the required 10 days period, Petitioners' Attorneys timely filed motion for Reconsideration under Rule 59(e) and request to the Honorable Court to give in writing the reasons for the denial. On December 19, 2003, the District Court entered and Order in which only addressed the reasons of the denial for the Request for Review but **did not rule** on the Reconsideration.

On January 7, 2004 and within the required 10 days period, Petitioners' Attorneys timely filed a motion requesting ruling an entry of judgment for the Reconsideration. Federal Rules of Civil Procedure Rule 58(d).

On February 25, 2004, the District Court entered an Order in which finally ruled on the Reconsideration. On March 22, 2004 and within the required 30 days period, Petitioners, pro-se, timely filed a Notice of Appeal which includes the November 24, 2003, December 19, 2003 and February 25, 2004 Orders in compliance with Federal Rules of Civil Procedure Rule 59(e) and Rule 60.

Whether the Honorable District Court of Appeals erred when dismissed as untimely the appeal for the November 24, 2003 and December 19, 2003 when Petitioners were requesting an entry of judgment for the First Reconsideration and the Notice of Appeal was timely filed, within the 30 days period, on March 22, 2004. Federal Rules of Civil Procedure Rule 58(d), Rule 59(e) and Rule 60.

3. Whether the Honorable Court of Appeal misconstrued or erred when cited White vs. Fair, 289 F3d 1, 11 (1st Cir. 2002) and judged Petitioners' motion for request for entry of judgment for the Reconsideration as a "second motions for reconsideration reviewed for abused of discretion". Federal Rules of Civil Procedure Rule 58(d).

4. On January 7, 2003 and the same day that the motion requesting ruling was filed, Petitioners' attorneys informed to Petitioners that they will not be available to appeal the case to the Court of Appeals for the First Circuit. The next day January 8, 2004, Petitioners filed a motion requesting extension of time.

Whether the Honorable Court of Appeal misconstrue the events when state that Plaintiff filed as untimely the Notice of Appeal and cited Mirpuri v. Act Manufacturing, Inc., 212 F.3d 624, 627 (1st Cir. 2000) and Gochis v. Allstate Ins. Co., 16 F.3d 12, 14 (1st Cir. 1994) (motions to extend time for filling an appeal reviewed for abuse of discretion).

5. Whether Respondents could arbitrary, capricious and in an abuse of discretion change the procedure under the Plan and the Agreement, signed by the parties, trying to force Mrs. Cintrón accept the changed terms and conditions and refused to supply her the information she is entitled to which led into her claim denial.

6. Whether the procedures were intended by the congress to served important policy considerations such as:

> "1) the reduction of frivolous litigation, 2) the promotion of consistent treatment of claims, 3) the provision of nonadversarial method of claim settlement, 4) minimization of cost of claim

settlement, 5) a proper reliance on administrative expertise, and 6) a development of a complete record for review by the courts."

Tarr. V. State Mutual Life Assur., 913 F Supp. 40, 44 (D.Mass. 1996). Diaz v. United Agr. Employee Welf., 50F.3d 1478 (9th Cir.1995). Spinger v. Wal-Mart Assocs., 908 F, 2d 897 (11th Cir. 1990). CFR Code of Federal Regulation 2560.503-1.

7. Whether the Honorable Court of Appeals for the first Circuit erred and misconstrued the events when state that even if the substance of the appeal was reviewed it is extremely doubtful that Plaintiffs would prevailed because Cintrón-Parrilla failed to attend to any appointments as allegedly requested by the Defendants' Employee Benefits Committee (the "Benefits Committee") when Respondents breached the terms, conditions and procedure Agreement and the Plan. Code of Federal Regulation 2560.503-1.

8. Whether the Honorable Court of Appeals for the first Circuit erred when cited Donaho v. FMC Corp., 74 F.3d 894, 899 (1st Cir.[1] 1996); Pari-Fasano v. ITT Hartford Life and Accident Ins. Co., 230 F.3d 415, 419 (1st Cir. 2000); and, Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 184 (1st Cir. 1998) ("If the committee's decision offers a reasonable explanation, their decision should not be disturbed even if another reasonable, but different, interpretation is made.") when Respondents never presented any objective medical evidence that supports that Mrs.

---

[1] The Honorable Court of Appeal erroneous cited the circuit number it should read: 8th Cir.

Cintrón is not disabled. Tarr v. State Mutual Life Assur., 913 F. Supp.40, 44 (D. Mass. 1996).

In addition, in the same case cited by the Honorable Court of Appeals, Donaho v. FMC Corp., under abuse of discretion states:

> "...where the administrative decision lacks support in the record, or where the evidence in support of decision is overwhelmed by contrary evidence, the administrative decision is unreasonable and will not stand."

That is the case here. Also in the other case cited by the Honorable Court of Appeals, Pari-Fasano v. Hartford Life Accident Ins. Co., states:

> "Plan administrators may not arbitrary refuse to credit a claimant's reliable evidence, including the opinions of the treating physicians."

9. Whether the Plan refused to give information, ERISA Section 502(c)(1)(B). 29 U.S.C. §1132(c), §1133. Code of Federal Regulation 2560.503-1.

10. Whether the Honorable Court err when affirm orders entered February 25, 2004 under Federal Rules of Appellate Procedure Local Rule 27 (a), without receiving and evaluating the requested hearing transcripts concerning to this case, which where never filed by the District Court reporter without an explanation. Federal Rules of Appellate Procedures Rule 10 and 11(b)(1).

11. Whether a Defendant party capricious, arbitrary, in abuse of discretion, unilaterally change the terms and conditions under a settlement Agreement without the consent of the Plaintiffs party.

12. Whether the Defendant party denied Plaintiff's extended disability benefits claim because she refused to amend the signed Agreement and opted for follows the Agreement as written.

13. Whether the Honorable District Court errs when find as moot Plaintiffs' request to extend time to hire new attorney when their attorneys withdraw and refused to appeal their case to the First Circuit of Boston.

14. Whether the Petitioners must have the right to request that Respondent followed and complied with settlement agreement as written. AMF, Inc. v. Jewett, 711F.2d 1096, 1101(1st Cir. 1993):

> "Those who give up the advantage of a lawsuit in return for obligations contained in a negotiated decree, rely upon and have a right to except a fairly literally interpretation of the bargain that was struck and approved by the court."

15. Whether a settlement agreement is governs by Principles of Law Applicable to Contracts generally. Laserage Technology Corp. v. Laserage Laboratories, 972 F.2d 779(7th Cir. 1992).

16. Whether the court characterized a settlement negotiated "under the eyes of the court [as] a most solemn undertaking". Warner v. Rossignol, 513F.2d 678, 682 (1st Cir. 1975).

17. Whether a settlement Agreement "is a binding, conclusive and final as if had been incorporated into a judgment". Bostick Foundry v. Lindberg, 797F.2d 280, 283 (6th Cir. 1986).

18. Whether Respondent can force, coarse, penalized Mrs. Cintrón because she decided not to amend the Settlement

Agreement, in violation of her rights under the United States Constitution Amendment I, IX, X, XIV and under ERISA.

19. Whether there is a conflict of interest when the persons who had been involved in evaluating medical condition Mrs. Cintrón (such as the Lilly in house physician) are also involved in Mrs. Cintrón disability claim determination and is plausible in light of the record. Also, a case cited by the Honorable Appeal Court Pari-Fasano v. ITT Hartford Life and Accident Ins. Co.

20. Whether the people litigating Pro-se have less opportunity to present their arguments and/or request information to the Honorable Court of Appeal and the District Court when: the Court of Appeals denied to Petitioners the opportunity to file a brief under Federal Rules of Appellate Procedures Local Rule 27(a) and made said the decision without taking into consideration the requested transcripts that supports Petitioners argument, and when the District Court reporter never filed the requested transcripts even though the transcript were timely requested.

The famous commentator Moore in his treaty revised as of 1997, states:

> "A judgment must be valid in order to received full faith and credit. The corollary of this rule is that an invalid judgment is not entitled to full faith and credit.
>
> The question whether a judgment is valid should not be confused with the question whether the judgment is correct on the merits. A valid judgment is one that is not void **based on a constitutionally infirmity**, lack of jurisdiction or power of the

rendering court, fraud, or some other fundamental reason. Thus, a judgment is valid if:

(1) the judgment was rendered by a court that possessed jurisdiction (subject matter, personal and/or in rem),

(2) **the judgment was rendered in compliance with the due process requirements,**

(3) the judgment was rendered pursuant to an exercise of power granted the court that rendered it, and

(4) the judgment was not rendered as a result of extrinsic fraud" (Emphasis added and footnotes omitted).

See Moore's Federal Practice, sec. 130.04 [3], (Matthew Bender, 3d ed., 1997)

Very respectfully, there is no doubt that this Honorable Court has the authority to asses and decide if whether the prior Courts' Opinions and Orders and Judgments were issued in compliance with the minimal Due Process requirement, that is if whether the petitioners had a full and fair opportunity to litigate in the lower courts their case.

PARTIES

As per stated in the Second Amended Complaint filed on August 2, 2001, the parties are as follows (District Court Docket Document Number 42):

1. Kenia M. Cintrón Parrilla ("Mrs. Cintrón"), worked as an employee for Eli Lilly del Caribe, Inc., (before named Eli Lilly Industries, Inc.), Puerto Rico Branch, a subsidiary of Eli Lilly Industries, Inc. ("Lilly" or "Eli Lilly"), for approximately 20 years, as a chemist and senior quality assurance representative. As a Lilly employee Mrs. Cintrón is a participant in all of Lilly's E.R.I.S.A. plans and is entitled to the other employee benefits.

   Plaintiff-Petitioner

2. Miguel A. García Mendez ("Mr. García") is the husband of Kenia M. Cintrón Parrilla, and together they form a legal conjugal partnership.

   Plaintiff-Petitioner

3. Eli Lilly Industries, Inc. Health, and Welfare and Disability Plan, and/or Eli Lilly Puerto Rico Extended Disability Plan (the "Lilly Plan"), is an employee welfare benefit plan, and those terms are defined in Section 3 (1) and (3) of E.R.I.S.A., 29 U.S.C. sec. 1002 (1) and (3), and thus subject to the provisions of E.R.I.S.A., 29 U.S.C. §§ 1001 et seq. The Lilly Plan covers employees and former employees of Eli Lilly Industries, Inc. and/or Eli Lilly del Caribe, Inc., Puerto Rico Branch, and hence it covers the Plaintiff-Petitioner Kenia M. Cintrón Parrilla.

   Defendant-Respondent

4. Eli Lilly del Caribe, Inc. and/or Eli Lilly Industries, Inc., ("Lilly" or "Eli Lilly"), is a private corporation doing business in Puerto Rico, with its main business office located in Carolina, Puerto Rico, and it is the administrator and/or fiduciary or trustee of the Lilly Plan for its Employees or former employees in Puerto Rico.

   Defendant-Respondent

5. Company X is the health, welfare and disability plan of the Eli Lilly employees.

   Defendant-Respondent

6. Company Y is the administrator and/or fiduciary or trustee of the health, welfare and disability plan of the Eli Lilly employees, which is either natural or juridical person.

   Defendant-Respondent

7. Company A is the Eli Lilly Puerto Rico Employees Welfare Plan.

   Defendant-Respondent

8. Company B is the administrator and/or fiduciary or trustee of the Eli Lilly Puerto Rico Employee Welfare Plan.

   Defendant-Respondent

9. Company C is the Retirement Plan of Eli Lilly Industries Inc. and/or Eli Lilly del Caribe, Inc.

   Defendant-Respondent

10. Company D is the administrator and fiduciary or trustee of the Retirement Plan of Eli Lilly Industries, Inc., and/or Lilly del Caribe, Inc.

    Defendant-Respondent

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

For case from **federal courts**:

The opinions of the United States Court of Appeals appear at:

Appendix A to the petition, filed in Case Docket Number: 04-1536, unpublished;

Appendix B to the petition, filed in Case Docket Number: 04-1536, unpublished;

The opinions of the United States District Court appear at:

Appendix C to the petition, filed in Case Number: 3:99-cv-01229, Docket Number: 77, unpublished;

Appendix D to the petition, filed in Case Number: 3:99-cv-01229, Docket Number: 88, unpublished;

Appendix E to the petition, filed in Case Number: 3:99-cv-01229, Docket Number: 95, unpublished;

Appendix F to the petition, filed in Case Number: 3:99-cv-01229, Docket Number: 98, unpublished;

Appendix G to the petition, filed in Case Number: 3:99-cv-01229, Docket Number: 101, unpublished;

Appendix H to the petition, filed in Case Number: 3:99-cv-01229, Docket Number: 102, unpublished.

JURISDICTION

For cases from the **federal courts**:

The date on which the United States Court of Appeals decided my case was on October 1, 2004.

A timely petition for rehearing was denied by the United States Court of Appeals on November 9, 2004, and copy of the order denying rehearing appears at Appendix B.

The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Kenia M. Cintrón and Miguel A. García Méndez and their Legal Partnership bring to the Honorable Supreme Court this Cause of Action pursuant to the E.R.I.S.A. causes of action 28 U.S.C. §§ 1331 and under Sections 502 (a)(1)(B) and 502 (c)(1)(B) of E.R.I.S.A., 29 U.S.C. §§ 1132 (a)(1)(B), and 1132 (c)(1)(B).

In addition, pursuant to Law and Contract due to Respondents breaches of Settlement Agreement and under the U.S. Constitution for interfere with petitioners rights pursuant to Amendment I, IX, X, XIV and state law cause pursuant to 28 U.S.C. §§ 1367.

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STATEMENT OF THE CASE

1. Petitioner Kenia Cintrón Parrilla ("Mrs. Cintrón") worked for Eli Lilly Industries, Inc. and/or Lilly del Caribe, Inc. ("Lilly") for over 20 years.

2. Petitioner Miguel A. García Mendez ("Mr. García") is the husband of Kenia Cintrón Parrilla.

3. Respondent Eli Lilly Industries, Inc. Health, and Welfare and Disability Plan, and/or Eli Lilly Puerto Rico Extended Disability Plan (the "Lilly Plan" or "Plan") is an employee benefit plan, as those terms are defined in Section 3 (1) and (3) and thus subject to the provisions of ERISA , 29 U. S.C. §§ 1001.

4. Respondent Eli Lilly del Caribe, Inc. and/or Eli Lilly Industries, Inc., ("Lilly") is a private corporation doing business in Puerto Rico.

5. On June of 1997 while working at Lilly, Mrs. Cintrón became ill and was diagnosed with thoracic outlet syndrome and other alignments by a private neurologist, Dr. Tomás Hernández, which in his opinion was irreversible and disabled her work, since he determine that her condition was work related. Dr. Tomás Hernández referred Mrs. Cintrón to the State Insurance Fund ("SIF").

6. Mrs. Cintrón's ordeal began when she reported her medical condition to the Lilly's in-house physician, Dr. Felix Matos ("Dr. Matos") who referred her to a physiatrist, Dr. Marcos U. Ramos, who submit Mrs. Cintrón to a

physical examination counter indicated and dangerous[2] to her condition with weights, bendings, movements and concluded that Mrs. Cintrón has no ailment at all.

7. Then, Respondents denied Mrs. Cintrón benefits of a supplementary payment under Lilly's short term disability plan as worked related, even thought the SIF and the neurologist, Dr. Tomás Hernández, had determine her medical condition as worked related. In addition, two occupational therapy experts (one from the SIF and one from Lilly itself) examined Mrs. Cintrón's work area and advised changes to be made to the equipment and to the way Mrs. Cintrón handled her workload.

8. Mrs. Cintrón requested information on how to appeal this decision in several occasions but Respondents did not gave it to her.

9. Then, Mrs. Cintrón requested information on how to apply to the extended disability under the Lilly Plan but only contradictory information was given to her by Dr. Matos and Mr. Ricardo Flores ("Mr. Flores") from the Human Resources Department. Respondents did not give Mrs. Cintrón copy of the Plan or the procedures on how to apply.

10. After some time, Mrs. Cintrón was terminated form her employment.

11. Mrs. Cintrón asked why she was terminated without giving her the opportunity to apply for the extended disability she was informed that in order to apply to for long

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[2] A physiatrist who also examined Mrs. Cintrón, Dr. Florencio Lao characterized as counter indicated and dangerous to her condition the type of test performed to her with weights, bendings and movements.

term disability under the Plan she has to be an employee and she was not.

12. On March 5, 1999 Petitioners' Attorneys, filed a COMPLAINT against the respondents, Defendants-Appellees, Eli Lilly Industries, Inc. Health, and Welfare and Disability Plan, and/or Eli Lilly Puerto Rico Extended Disability Plan (the "Lilly Plan" or "Plan") Eli Lilly del Caribe, Inc. and/or Eli Lilly Industries, Inc., ("Lilly") pursuant to the Employees Retirement Income Security Act of 1994 ("ERISA"), to recover lost of benefits, for retribution due to Respondents failure to provide information and for punitive damages in the United States District Court for the District of Puerto Rico, Case Number 3:99-cv-01229 JAF. (District Docket Document No. 1).

13. On February 4, 2002, Petitioners' Attorneys filed an AMENDED COMPLAINT pursuant to ERISA, to recover lost of benefits, because unjust termination of Mrs. Cintrón's employment (under Section 502(a)(1)(B)) of ERISA, for retribution due to Respondents' failure to provide information (under Section 502(c)(1)(B) of ERISA, for punitive damages (under Section 502(c)(1)(B)) of ERISA and for Mrs. Cintrón's husband emotional distress pursuant to the state law cause (under Supplemental Jurisdiction). (District Docket Document No. 18).

14. On December 21, 2000, the District Court Judge file an OPINION AND ORDER stating:

> "In accordance with the foregoing, we **DENY** Defendants Lilly's motion for summary judgment. We GRANT Defendants the Plan's motion for summary judgment as to Plaintiff's claim for

> punitive damages, and we **DENY** the Plan's motion for summary judgment as to Plaintiff's other claims.
>
> **IT IS SO ORDERED**."

(See **APPENDIX J**).

15. On August 2, 2001, Petitioners' Attorneys filed a SECOND AMENDED COMPLAINT pursuant to ERISA, to recover lost of benefits, because unjust termination of Mrs. Cintrón's employment (under Section 502(a)(1)(B)), for retribution due to Respondents' failure to provide information (under Section 502(c)(1)(B)) of ERISA, for punitive damages under any section of ERISA other than 409(a), and pursuant to the state law cause for Mrs. Cintrón's husband emotional distress (under Supplemental Jurisdiction). (See **APPENDIX K**).

16. On September 25, 2001 the Petitioners and Respondents attorneys filed a proposed PRE TRIAL ORDER. (See **APPENDIX L**).

17. On September 28, 2001, the District Court Judge filed an ENDORSE ORDER approving the PRE TRIAL ORDER.

18. On December 19, 2001, a Settlement Conference was held before Hon. Judge Robert Ward in which both parties' attorneys met exploring alternatives that could lead to a settlement between the parties. On that same date, Hon. Judge Robert J. Ward filed a MINUTES OF PROCEEDING in which states:

> "Settlement conference held. Settlement appears to be premature at this time. The parties will continue negotiations and report to RJW by January 18, 2002."

(See **APPENDIX M**).

19. In said Settlement Conference among others, a proposal raised between the parties in which Mrs. Cintrón would submit a claim to the extended disability plan. To such proposal, Mrs. Cintrón' Attorneys proposed that in the event of a discrepancy regarding Mrs. Cintrón disability medical condition a neutral third party expert physician, chosen by both parties and the court, would performed an Independent Medical Evaluation ("IME") which would lead the parties to a final decision. Respondents' attorneys alleged that this option for a third party physician expert was not contemplated under the extended disability plan and it was only contemplated under the short disability plan, and therefore, should not be applied to Mrs. Cintrón extended disability claim. (See, Petition for Writ of Certiorari, **EXHIBIT 1**).

20. By a letter dated January 24, 2002, Respondents rejected the Petitioner Attorneys' proposal. (District Docket Document No. 65, Exhibit 2). (See, **APPENDIX N**)

21. On May 8, 2002, Respondents filed an INFORMATIVE MOTION REGARDING CASE SETTLEMENT erroneously and misinforming the District Court that the case was settled and requesting the trial to be set aside. (District Docket Document No. 62).

22. On June 3, 2002, Petitioner's Attorneys filed an INFORMATIVE MOTION informing the District Court that the case was not settled yet and that both parties were in conversation trying to reach an agreement. (District Docket Document No. 63).

23. On June 7, 2002 and pursuant to the INFORMATIVE MOTION filed by plaintiffs' attorneys, Hon. Judge Fuste filed an ORDER in which Noted:

> "However, counsels are remained that our order entered May 7, 2002, Docket Document No. 61, remains in full force and effect until settlement and/or dismissal documents are filed."

(See, **APPENDIX P**).

24. On July 3, 2002, RESPONDENTS FILED A MOTION REQUESTING ENFORCEMENT OF SETTLEMENT AGREEMENT and a MOTION REQUESTING TRIAL DATE TO BE SET ASIDE. (District Docket Document Nos. 65 and 66)

25. On July 9, 2002, Petitioners' Attorney filed an OPPOSITION TO DEFENDANTS MOTION OF 3RD OF JULY stating that there was not a settlement agreement but negotiations to settle and his believing that the parties needed the help of the court to try to reach an agreement. (District Docket Document No. 67)

26. On July 31, 2002, a Hearing[3] was held before Hon. Judge Fuste pursuant to the settlement discrepancies between the parties.

27. That on that same date of July 31, 2002, Honorable District Judge signed and Order in which stated:

> "Parties appeared today. The case was not settled as originally proposed. Parties granted until August 14 to file a signed settlement agreement. Advised the case should be tried starting August 15, 02, 9:30 A.M."

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[3] For an unexplained reason the transcript of this hearing was not submitted and/or filed in the Court of Appeals for the First Circuit even thought it was requested by Petitioners, since the same day, of March 22, 2004, when the Notice of appeal was filed.

(See, **APPENDIX R**).

28. On August 13, 2002 a Settlement Conference was held before Hon. Judge Fuste in which, with the Honorable District Judge help, a settlement agreement was raised between the parties. That same day, by approximately 5:00 p.m., at the Settlement Conference, Hon. Judge Fuste ordered the parties to meet, sign and file a settlement agreement by August 14, 2004 before noon.

29. On the same day, August 13, 2002, Petitioners and their attorneys, (Mr. Guillermo Macari) and met with the Respondents' Attorneys (at the Respondents' Attorneys offices) offices and stayed until August 14, 2002, after 1:30 am, in order to comply with the Honorable District Judge order and sign a Settlement Agreement which would govern the term and condition for the procedure to be follow by the parties. The Settlement Agreement also establishes the alternatives, remedies and options of each party including options to bring the case before the Honorable Court. (See **APPENDIX AY, Filed Under Seal**).

30. As part of the Settlement Agreement, Mrs. Cintrón would be allowed to submit evidence that confirmed Mrs. Cintrón retroactive disability since May of 1998 pursuant to page 7 paragraphs 3 and 4 of the Settlement Agreement, and pages 19 and 20, section 6.02(a) of the Lilly Plan. (See **APPENDIX AY Filed Under Seal**, page 7 and its Exhibit A pages 19 and 20).

31. There was no agreement regarding to an independent medical evaluation by a third party because Respondents refuse to agree in an expert physician selection in which Petitioners and/or the court were involved.

32. On August 14, 2002, all parties' attorneys filed a JOINT MOTION REQUESTING PARTIAL VOLUNTARY DISMISSAL WITH PREJUDICE AND SUBMITTING AGREEMENT UNDER SEAL. (See **APPENDIX S**).

33. On that same day, August 14, 2002, Hon. Judge Fuste filed an ENDORSE ORDER approving document under seal. (District Docket Document No. 76).

34. Also on August 14, 2002, Hon. Judge Fuste filed a Judgment stating:

> "The joint motion seeking voluntary dismissal is approved under the term of the sealed agreement.
>
> This case is closed, subject to be reopened for the limited review purposes contemplated by the parties."

(See **APPENDIX C**)

35. On August 16, 2002, Mrs. Cintrón timely filed her disability claim to the Plan pursuant to the Agreement and the Plan subject terms and/or conditions under the Settlement Agreement signed by the parties. (See, **APPENDIX AB**, pages App. 176 to App. 325).

36. On that same day, the Employee Benefits Plan Committee received the benefits claim by fax and by mail on August 19, 2002. (See **APPENDIX AB,** pages App. 183 and App. 184).

37. By September 23, 2003 Lilly's attorney, Mr. Usera, the parties started a dispute because the Lilly capricious, arbitrary and in abuse of discretion unilaterally altered, changed and failed to comply with the terms and conditions under the Plan and the Agreement signed by the parties.

38. By a letter dated September 23, 2002, one of the Lilly's attorneys stated that a "Committee within Lilly" requests[4] Ms. Cintrón to undergo to independent medical evaluations and to render the reports to the Lilly in house-physician, Dr. Felix Matos[5], instead of to the Lilly Benefits Plan Review Committee as required under the Agreement and the Plan. (See **APPENDIX AB,** pages App. 328 and App. 329).

39. Ironically and after Respondents refused to stipulate as part of the Settlement Agreement the proposal to independent medical evaluations (IME's) by a third party selected by both parties and the court and, after the Settlement Agreement was signed by the parties, Respondents suggested, insisted and tried to force in Mrs. Cintrón to agreed in IME and physicians selection but from lists of physician only pre selected by Respondents.

40. On September 26, 2002 and based on the fact that the procedure was being changed, Mrs. Cintrón sent a letter to the Lilly Employee Benefits Plan Committee asking for information and to clarify her doubts, to which Mrs. Cintrón is entitled and which is properly addressed pursuant to the Agreement footnote 4. (See **APPENDIX AB,** page App.

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[4] This request was not pursuant to section 6.02(b) of the Plan; instead it was pursuant to the Lilly Employee Manual of 1994 which is not part of the Agreement signed by the parties.

[5] Dr. Felix Matos is the Lilly Puerto Rico in house physician and was part of the controversy in this case as described in the Pre-Trial Order under Uncontested Facts. See, **APPENDIX L**, pages App. 103 to App. 112. Due to the great differences between Mrs. Cintrón and Dr. Felix Matos Mr. John J. Purcell was designated as the contact person between Mrs. Cintrón and the Lilly Plan Extended Disability Benefits Committee, pursuant to the Agreement, page 7, footnote 4.

326 and App. 327, and **APPENDIX AY**, footnote 4, Filed Under Seal). This event was intentionally bad addressed by Respondent in an act to coarse Mrs. Cintrón's right.

41. Intentionally and as a coercive mechanism to force Mrs. Cintrón to agree to Respondents suggestions, Respondents delayed the process and failed to comply with the timelines established under the Lilly Plan and the Agreement to require time extension and even failed to timely notify Mrs. Cintrón the denial decision.

42. Furthermore, Respondents refused to clarify and notified Mrs. Cintrón questions in order to perfect her claim as required by the Lilly Plan under section 6.05(3) which states that Mrs. Cintrón should be informed of:

> "a description of additional material or information, if any, needed to perfect the claim and the reasons such material or information is necessary;"

43. On October 2, 2002 and by a letter dated October 2, 2002, the Lilly's attorney notified Mrs. Cintrón's attorney of a thirty day extension, pursuant to paragraph 7 of the Agreement. Contrary to what is stated in the Agreement, this extension was required by Respondent in a breached of Agreement and the Plan and not to "matters beyond the Committee's control". This is because the Lilly Employee Benefits Plan Committee: 1) did not follow the Plan's Procedure of timely informed Mrs. Cintrón to the physician they want her to undergo, 2) in a breached of Agreement and the Plan and in violation of Mrs. Cintrón's rights under ERISA, limited Mrs. Cintrón options to "submit to the requested independent medical evaluation or decline the request and leave the matter to be decided based on the information previously submitted by Mrs. Cintrón, 3) never

presented any objective support data, just a non expert opinion, which sustain that 'there appeared to be several areas of poor correlation between her reported symptoms and the diagnostics studies provided by her". Also because it was never clarified to Mrs. Cintrón which Committee was requesting the independent medical evaluation since the Lilly's attorneys insisted that the independent medical evaluation reports should be rendered to Lilly's in house-physician and not to the Lilly Employee Benefits Plan Committee as describe under the Agreement and the Plan. (See **APPENDIX AB**, pages App. 330, to App. 332).

44. By a letter dated October 12, 2002, Mrs. Cintrón submitted additional reports and again requested information from the Lilly Employee Benefits Plan Committee, which never responded to Mrs. Cintrón doubts. (See **APPENDIX AB**, page App. 333 to 340)

45. By a letter dated October 21, 2002, Mrs. Cintrón's attorney request information from the Lilly Employee Benefits Plan Committee, in order to Mrs. Cintrón make a decision regarding the independent medical evaluation and the physician selection. (See **APPENDIX AC**, page App. 456 and App. 457)

46. By a letter dated October 28, 2002, the Lilly's attorney informed to Mrs. Cintrón of the physicians selected by them again insisted in that the independent medical reports should be rendered to Dr. Felix Matos, Lilly in house-physician and not to the Lilly Employee Benefits Plan Committee, and again refused to clarify Mrs. Cintrón's doubts. In addition, Lilly's attorney again requested an addition thirty day extension. (See **APPENDIX AC**, page App. 458 and App. 459)

47. By a letter dated October 31, 2002, Mrs. Cintrón informed her attorney her decision of not to accept Lilly's attorneys proposal because her doubts were never clarified and because the proposal was defined and described "**optional**" and not a requirement. (See **APPENDIX AZ**, Filed Under Seal, page 145)

48. On November 4, 2002, Mrs. Cintrón did not attend to the medical appointment for the reasons previously informed in the October 31, 2002 letter.

49. Finally in a violation of the Lilly Plan and the Agreement, signed by the parties, Respondents gave and limited Mrs. Cintrón options to: undergo to independent medical evaluation or to summit her claim with the information already submitted by her to the Plan's Committee. (District Docket Document No. 77). (See **APPENDIX AZ**, page 147 Filed Under Seal)

50. By a letter dated, on November 6, 2002, Mrs. Cintrón informed her decision of not to attend to independent medical evaluation because there were optional not a requirement and because everybody refuse to clarify her doubts and she did not even knew which Committee was requesting the independent medical evaluation. (See **APPENDIX AZ**, page 152 Filed Under Seal)

51. Due to the fact that Mrs. Cintrón's doubts were never clarified to her and the event that she was forced to choose between the two options, she chose to submit her claim with the information already submitted and other updated medical information submitted by her after the claim was filed that she understood could clarify any doubt regarding her medical condition.

52. This dispute led to Mrs. Cintrón Extended Disability Benefits Claim denial by the Lilly Plan's Review Committee.

53. On December 10, 2002 and after the expiration time to notify the decision, Mrs. Cintrón untimely received a letter dated December 2, 2002, which denied her disability claim. In which only some of the medical evaluation were considered, but the ones that confirm Mrs. Cintrón disability were not. (See **APPENDIX AB**, page App. 351 to App. 355).

54. By the MOTION filed on February 26, 2003, MOTION IMPLORING HELP FROM THE HONORABLE COURT filed on April 1, 2003 and Motion Requesting Urgent Hearing filed on April 25, 2003, Petitioners, pro-se, request help from the Honorable District Court due to Respondents breach of Agreement and Petitioners' Attorneys negligence to act. (See **APPENDIX T** and **APPENDIX W**)

55. On April 16, 2003, Petitioners' Attorneys, Mr. Jesús Hernandez Sanchez and Mr. Guillermo Macari) filed a MOTION REQUESTING URGENT HEARING AND TO WITHDRAW AS ATTORNEYS OF RECORD. (See **APPENDIX V**).

56. On May 13, 2003, Hon. Judge Fuste filed and Order stating:

> "A hearing to delucidate these matters shall be held on may 16/03 1:30 PM"

(See **APPENDIX X**).

57. On May 16, 2003 the Hearing[6] was held before Hon. Judge Fuste, to which attended Petitioners pro-se, petitioners' attorney, Jesus Hernández Sanchez, and respondents' attorney, Carl Schuster.

58. At that Hearing petitioner were not allowed to present all their arguments but were allowed to present some of them regarding the Respondents breach of agreement. Petitioners were also allowed to submit the documentation that supports their allegations regarding the Respondents breach of the agreement and the Petitioner attorneys' negligence. Hon. Judge Fuste requested to Respondents' attorney, Carl Shuster to file a chronology of events presented by him before the court, and instructed Petitioner to appeal to the Lilly's Plan Committee.

59. The MINUTES OF PROCEEDINGS, of this Hearing, were filed on July 1, 2003 and second MINUTES OF PROCEEDING, of this same Hearing, were filed on July 23 2003. (See **APPENDIX Y** and **APPENDIX Z**)

60. On May 19, 2003, Respondents' Attorneys filed a Motion in Compliance with Court Order telling their version of the events. (See **APPENDIX AA**)

61. On July 1, 2003, Hon. Judge Fuste filed an Order in which stated:

> "The pending request by Plaintiff to set aside then Settlement and/or for settlement related specific relief is **DENIED**...

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[6] For an unknown reason the transcript of this hearing was neither not submitted and/or filed in the Court of Appeals for the First Circuit, neither. Even thought it was also requested by Petitioners the same day, of March 22, 2004, that the Notice of appeal was filed.

> The Settlement agreement requires full exhaustion of Eli Lilly's Disability Plan procedures. Until this is accomplished, the court will not consider relieving any party from the terms of the settlement.
>
> **IT IS SO ORDERED.**"

(See **APPENDIX D**)

62. On September 25, 2003, Petitioners Attorneys timely filed REQUEST FOR REVIEW AND PETITION FOR ORAL ARGUMENT ("Request for Review") due to the arbitrary and capricious nature of the decisions and due to breach of the Agreement and the Plan by Respondents. (See **APPENDIX AB**)

63. On October 27, 2003, Defendants filed an OPPOSITION TO REQUEST FOR REVIEW AND PETITION FOR ORAL ARGUMENT ("Opposition to Request for Review") petition in which admitted violations to Petitioners rights under the Agreement, the Plan, ERISA, and the U. S. Constitution such as the right to ask and know information regarding Mrs. Cintrón disability claim denial request, the right to choose or not to chose from the options suggested by the Plan and/or a Committee, the right to agree or not agree to amend the Agreement, the right of not to be discriminated nor punished for exercise her rights, under the agreement and the U.S. Constitution among others. Respondents also admitted in this document their breach of agreement. (See **APPENDIX AC**)

64. On November 24, 2003, Hon. Judge Fuste filed an ORDER in which stated only the word "**Denied**". By this means the Hon. Judge Fuste denied Petitioners request for Review contrary to what was stated in the Agreement, the August 14, 2002 Order and the July 1, 2003 Order, in which

petitioners have the right to request a review before the court in the event of the Plan's denial of Mrs. Cintrón's disability claim. (See **APPENDIX E**)

65. On December 8, 2003, Petitioners' Attorneys timely filed a MOTION FOR RECONSIDERATION UNDER RULE 59(E) AND VERY RESPECTFULLY REQUEST TO THE HONORABLE COURT TO GIVE IN WRITING THE REASONS WHY THE COURT DENIED PLAINTIFF'S REQUEST FOR REVIEW ("Reconsideration") to know how Petitioners should proceed in this case. (See **APPENDIX AD**)

66. On December 19, 2003, Hon. Judge Fuste filed and order in which only stated:

> "The reasons appear from the record and are summarized in docket 93".

According to Petitioners' Attorneys Hon. Judge Fuste did not Rule in the Reconsideration and only gave the reason for the denial of the Request for Review. (See **APPENDIX AF**, page App. 486)

67. On January 7, 2004, Plaintiffs' Attorneys timely filed a MOTION REQUESTING OUR MOTION FOR RECONSIDERATION TO BE DENIED OR GRANTED due to the lack of ruling on the Reconsideration. (See **APPENDIX AE**). Requesting a ruling and an entry of judgments according to Federal Rules of Civil Procedures 58(d)

68. On that same date of January 7, 2004, Petitioners were notified of their own attorneys' withdrawal.

69. On January 8, 2004, Petitioners timely filed a MOTION TO INFORM TO THE HONORABLE COURT THE WITHDRAWAL OF PLAINTIFF ATTORNEYS OF

RECORD, TO REQUEST TIME TO HIRE PLAINTIFFS NEW LEGAL REPRESENTATION AND TO REQUEST THE EXTENSION OF THE PERIOD OF TIME TO FILE THE RECONSIDERATION AND APPEAL PROCESSES FOR THE DENIAL TO PLAINTIFFS REQUEST FOR REVIEW in order to be allowed to a have due process of law. (See **APPENDIX AF**)

70. On February 22, 2004, Hon. Judge Fuste filed an ORDER in which stated:

> "The motion for reconsideration has been properly documented and denied"

In this Order Hon. Judge Fuste finally ruled and entry a judgment to the Reconsideration under Rule 59(e). (See **APPENDIX G**)

71. On February 22, 2004, Hon. Judge Fuste filed an ORDER in which stated:

> "Order finding as moot [100] Motion to Withdraw as Attorney, finding as moot [100] Motion for extension of time, finding as moot [100] Motion for extension of time. This case is closed for all purposes."

(See **APPENDIX H**).

By this means Hon. Judge Fuste denied to Petitioners any possibility of review their case and granted respondents to violate Mrs. Cintrón rights.

72. On March 22, 2004, Petitioner timely file a Notice of Appeal to include August 14, 2002 Judgment, July 1, 2003 Order, November 24, 2003 Order, December 19, 2003 Order, and both February 22, 2004 Orders This is because Petitioners understand that they have not been granted a fair due process under the Agreement, the Plan and the

Honorable Court and due to breach of the Agreement and the Plan by Respondents which was erroneously granted by the Honorable District Court.

73. On October 1, 2004, the Hon. Court of Appeal filed a Judgment in which dismissed the August 14, 2002 Judgment, July 1, 2003 Order, November 24, 2003 Order, December 19, 2003 Order, and both February 22, 2004 Orders appeal and affirmed both February 22, 2004 Orders under Federal Rules of civil Procedures Rule 27(a). (See **APPENDIX A**)

74. This decision was made without giving Petitioners the opportunity to file a brief and present their argument to the Court of Appeal. Even more the decision was made without taking into the consideration the transcript of the Hearings held on July 29, 2002 and May 16, 2003 requested by Petitioners. For an unknown reason the requested transcript were never filed or submitted to the Court of Appeal by the District Court reported although she was ordered to do so. (See Exhibits 2 to 7) in which Petitioners have been requesting information from the Honorable District Court Reporter and the First Circuit Appeal Court Assistant unsuccessfully.

REASONS FOR GRANTING THE PETITION

1- Petitioners very respectfully understand that the Honorable Court of Appeals for the First Circuit erred when dismissed as "untimely filed" the Notice of Appeals which was timely filed on March 22, 2004 for an Order entered on November 24, 2003, to which a motion for reconsideration under Rule 59(e) was timely filed on December 8, 2003 (within the 10 days required time period), and which was finally ruled and judgment entry by the District Court on February 25, 2004. Federal Rule of Civil Procedure 58(d).

2- The Honorable Court of Appeals wrongly defined the Order entered on February 25, 2004 as an order which ruled on a "second reconsideration", which is not correct as explained hereafter.

3- On September 25, 2003 and within the required 30 days period, Petitioners' Attorneys timely filed a motion for REQUEST FOR REVIEW AND PETITION FOR ORAL ARGUMENT ("Request for Review"). On November 24, 2003, the District Court entered an Order denying Petitioners' Request for Review in which only stated the word "Denied'. On December 8, 2003 and within the required 10 days period, Petitioners' Attorneys timely filed a MOTION FOR RECONSIDERATION UNDER RULE 59(E) AND VERY RESPECTFULLY REQUEST TO THE HONORABLE COURT TO GIVE IN WRITING THE REASONS WHY THE COURT DENIED PLAINTIFF'S REQUEST FOR REVIEW ("First Reconsideration"). On December 19, 2003, the District Court entered and Order only addressing the reasons for the denial of the Request for Review but **did not rule** on the First Reconsideration. On

January 7, 2004 and within the required 10 days period, Petitioners' Attorneys timely filed a MOTION REQUESTING OUR MOTION FOR RECONSIDERATION BE DENIED OR GRANTED ("Request of Ruling for First Reconsideration"). On February 25, 2004, the District Court entered an Order in which finally ruled on the First Reconsideration. On March 22, 2004 and within the required 30 days period, Petitioners, pro-se, timely filed a Notice of Appeal which includes the November 24, 2003, December 19, 2003 and February 25, 2004 Orders in compliance with Federal Rules of Civil Procedure Rule 59(e) and 60.

In summary, **there was no "second reconsideration"**; **there was a request of ruling for the First Reconsideration** which was finally ruled in the Order entered on February 25, 2004. Therefore, Petitioners very respectfully understand that the Honorable Court of Appeals erred when dismissed the appeal for the November 24, 2003 and December 19, 2003 as "untimely", in accordance to Federal Rules of Civil Procedures Rule 58(d), 59(e) and 60.

4- The District Court also dismissed the appeal for the Orders entered on August 14, 2002 and July 1, 2003 as "untimely". These orders were left partially open and/or pending issues to be finally addressed when the disability benefits appeal claim process finished. These pending issues of the August 14, 2002 and July 1, 2003 orders were finally ruled among with the motions for Request for Review, First Reconsideration and Request of Ruling for First Reconsideration. Therefore, Petitioners very respectfully understand that the Honorable Court of

Appeals erred when dismissed the appeal for the August 14, 2002 and July 1, 2003 orders as "untimely", in accordance to Federal Rules of Civil Procedure Rule 54 (b).

5- The Honorable Court of Appeals denied petitioners the opportunity to file a brief and present the argument to support the appeal for the two orders entered on February 25, 2004 (to which a Notice of Appeal was timely filed on March 22, 2004) when affirmed such orders under Federal Rules of Appellate Procedure Local Rule 27 (a).

6- The Honorable District Court for the District of Puerto Rico erred when denied Petitioners Request for Review and stated that the reasons "are summarized in docket 93", meaning the Opposition to Request for Review filed by Respondents, as explained hereafter.

7- In said Opposition to Request for Review the Honorable District Court granted:

> "...the decision-maker's determination to deny Ms. Cintrón's extended disability benefits should be upheld, inasmuch as it was within its authority, reasoned, and supported by **substantial evidence** in the record. Leahy v. Raytheon, 315 F.3d 11, 17 (1st Cir. 2002); Pari-Fasano v. ITT Hartford Life & Acci. Ins. Co., 230 F3.d 415, 419 (1st Cir.2000); Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 183-184 (1st Cir. 1998); Donaho v. FMC Corporation, 74 F.3d 894 (8th Cir. 1996). In the Black and Decker Disability Plan v. Nord, 123 S.Ct. 1965, 67-68 (2003), the United States Supreme Court ruled that the "treating physician rule" is not applicable under ERISA claims and determine that "courts have no warrant to require administrators

> automatically to accord special weight to the opinions of a claimant's physicians; nor may courts impose on administrators a discrete burden of explanation when they credit **reliable evidence that conflicts with the treating physician's evaluation**.""

See **APPENDIX AC**, page App. 446 and 447.

But, no evidence that supports these allegations was neither submitted to nor requested or required by the Honorable District Court whatsoever.

8. In addition, the Honorable District Court also granted:

> "...Ms. Cintrón refused to take the necessary steps to allow the Benefits Plan Review Committee and the Employee Benefits Committee to evaluate her request. **Both the Benefit Plan Review Committee and the Employee Benefits Committee acted at all times in good faith and consistent with both the Settlement Agreement and the Provisions of the Plan. In light of the above, there is no question that Lilly's decision to deny plaintiff's extended disability benefits was supported by substantial evidence on the record, and that its decision was not arbitrary and capricious**."

See **APPENDIX AC**, page 454.

But, to the contrary both, the Benefit Plan Review Committee and the Employee Benefits Committee, breached the Settlement Agreement and refused to follow the Plan's procedure as explained hereafter.

9. In the same Opposition to Request of Review the Honorable District Court granted distorted and incomplete chronology of events as explained hereafter.

10. Respondents have not shown a single piece of evidence from any physician and/or medical expert that supports that Mrs. Cintrón is not disabled.

11. Due to lack of evidence, Respondents recurred to unilaterally change and breach the term and condition of the Disability Plan and Agreement (signed by the parties) to deny Mrs. Cintrón benefits and violate Mrs. Cintrón's rights.

12. We, the Petitioners, signed an Agreement which was assured to us, by our attorneys and by Respondents, that was agreed and included in this Agreement is contractual to each party and no modification and/or alteration would be made and/or be binding unless it is written and included as an amendment to this Agreement, pursuant to page 11, paragraph 12, of the Agreement (filed under seal), as we complied with.

13. That when we, the Petitioners, signed the settlement Agreement we did not signed a blank check allowing Respondents to do what they wanted but to comply with it as written and agreed.

14. We, the petitioners, timely complied with all the requirements under the Agreement and the Plan, which Respondents did not do, and we timely submitted the Request for Review and Oral Argument, Reconsideration, Notice of Appeal and Rehearing to the corresponding Justice System of the United States.

15. The Honorable Court of Appeals even denied us, the Petitioner, the opportunity to file a Brief under Federal Rule

of Appellate Procedures Rule 27(a) "Assent. Motions will not be necessary to be allowed even though assent to", denying us thus the opportunity to present our position and/or arguments, which according to us is unexplained and erroneous.

16. Petitioners have been denied of the opportunity to litigate in full and fair manners the issues and fact of the case.

17. We, the Petitioners, are acting pro-se and we recognize that we are no lawyers but at the same time we respectfully believe that we also deserve the same opportunity to a due law process and fair justice under the United States of America Justice System and should be allowed to the opportunity to present our allegations and to be heard by the Honorable Supreme Court of the United States, thus the Honorable Court of Appeals and the Honorable District Court have denied us that opportunity.

We pray to GOD to guide and help us in this process and implore and beg to this Honorable Supreme Court to be heard and GRANT our PETITION FOR WRIT OF CERTIORARI, as well.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenia M. Cintrón Parrilla

Miguel A. García Méndez

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 04-1536

KENIA M. CINTRON-PARRILLA, ET AL.,
Plaintiffs, Appellants,

v.

ELI LILLY INDUSTRIES, INC., ET AL.,
Defendants, Appellees.

Before

Campbell, Senior Circuit Judge,
Torruella and Selya, Circuit Judges

JUDGMENT

Entered: October 1, 2004

Plaintiffs, Kenia M. Cintron-Parrilla ("Cintron-Parrilla") and Miguel A. Garcia-Mendez, filed a notice of appeal on March 22, 2004, purporting to challenge the orders entered by the District of Puerto Rico on August 14, 2002, July 1, 2003, November 24, 2003, December 19, 2003, and February 25, 2004. We ordered Plaintiffs to show cause why the appeal should not be dismissed as untimely regarding all but the February 25, 2004 orders. Having reviewed Plaintiffs' response and the record, we dismiss the appeal as untimely with regard to the orders entered August 14, 2002, July 1, 2003, November 24, 2003 and December 19, 2003 and affirm the orders entered February 25, 2004, for which the appeal is timely.

The district court entered two orders on February 25, 2004: (1) an order denying Plaintiffs' second motion for reconsideration; and (2) an order dismissing Plaintiffs' motion for an extension of time to file for reconsideration and to appeal. It did not abuse its discretion in denying Plaintiffs' second motion for reconsideration. See White v. Fair, 289 F.3d 1, 11 (1st Cir. 2002) (second motions for reconsideration reviewed for abuse of discretion). The district court assayed Plaintiffs' arguments on their motion for judicial review. Declining to revisit the same issues a second time does not rise to the level of an abuse of discretion. There is no evidence that the court "switched the basic issue" when ruling on the motion for judicial review, such that Plaintiffs were left without sufficient notice or opportunity to respond. Compare Douglas v. York County, 360 F.3d 286, 290 (1st Cir. 2004) (finding an abuse of discretion where the district court "injected a new issue into the case without giving notice and an opportunity to respond").

Nor did the district court abuse its discretion in dismissing the motion for an extension of time to file for reconsideration and to appeal. See Mirpuri v. Act Manufacturing, Inc., 212 F.3d 624, 627 (1st Cir. 2000) (motions to extend time for filing an appeal reviewed for abuse of discretion); Gochis v. Allstate Ins. Co., 16 F.3d 12, 14 (1st Cir. 1994) (same). Plaintiffs argued in their motion for an extension of time that they did not receive docket entry no. 93, which the district court indicated set out the reasons for dismissal and without which, Plaintiffs allege, they could not know the basis of their appeal, until January 7, 2004. Nonetheless, at that point, Plaintiffs still had until January 20 to file a timely notice of appeal, which they

failed to do. That Plaintiffs were hoping to secure new counsel does not excuse this failure.

In any event, even if we were to review the substance of this appeal, it is extremely doubtful that plaintiffs would prevail. Because it could not verify Cintron-Parrilla's disability claim on the medical information she had submitted, Defendants' Employee Benefits Committee (the "Benefits Committee") requested, as permitted by the settlement agreement and extended disability benefit plan, that Cintron-Parrilla see an independent neurologist and psychiatrist for medical evaluation. Cintron-Parrilla initially agreed to the evaluations but ultimately failed to attend any appointments. Under such circumstances, the Benefits Committee's decision to deny the claim cannot be said to have been arbitrary or capricious. Donaho v. FMC Corp., 74 F.3d 894, 899 (1st Cir. 1996) ("If the committee's decision offers a reasonable explanation, their decision should not be disturbed even if another reasonable, but different, interpretation may be made."); see also Pari-Fasano v. ITT Hartford Life and Accident Ins. Co., 230 F.3d 415, 419 (1st Cir. 2000); Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 184 (1st Cir. 1998).

The appeal is dismissed as to the orders entered August 14, 2002, July 1, 2003, November 24, 2003, and December 19, 2003. The orders entered February 25, 2004 are affirmed. See Local R. 27(a).

By the Court:
RICHARD CUSHING DONOVAN
Richard Cushing Donovan, Clerk.

[cc: Messrs: Cintron Parrilla, Hernandez Sanchez, Garcia – Mendez and Hernandez-Venegas]

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 04-1536

KENIA M. CINTRON-PARRILLA, ET AL.,
Plaintiffs, Appellants,

v.

ELI LILLY INDUSTRIES, INC., ET AL.,
Defendants, Appellees.

Before
Torruella, Circuit Judge,
Campbell, Senior Circuit Judge,
and Selya, Circuit Judge.

ORDER OF COURT

Entered: November 9, 2004

The petition for rehearing is denied.

By the Court:
Richard Cushing Donovan, Clerk.

By: MARGARET CARTER
Chief Deputy Clerk.

[cc: Messrs: Cintron Parrilla, Hernandez Sanchez, Garcia – Mendez and Hernandez-Venegas]

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Kenia M. Cintrón Parrilla, et. al.

VS. CIVIL NO. 99-1229 (JAF)

Eli Lilly Industries, Inc., et. al.

DESCRIPTION OF MOTION

DATE FILED:	DOCKET:	TITLE:
[]Plffs.	[] Defts.	

O-R-D-E-R

Judgment

The Joint motion seeking voluntary dismissal is approved under the terms of the sealed agreement.

The case is close, subject to reopening for the limited review purposes contemplated by the parties.

8/14/02
Date

/s/ Jose A. Fuste
JOSE A. FUSTE
U.S. DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA,
Plaintiff,

v. Civil No.: 99-1229 (JAF)

ELI LILLY INDUSTRIES, INC.;
ELI LILLY DEL CARIBE, INC.,
and ELI LILLY INDUSTRIES,
INC. HEALTH, WELFARE AND
DISABILITY PLAN,
Defendants.

ORDER

The pending request by Plaintiff to set aside the settlement and/or for settlement-related specific relief is **DENIED.**

As agreed by the parties, Plaintiff submitted her claim for extended benefits to Eli Lilly's Benefit Plan Review Committee within sixty days after the execution of the settlement agreement. The Committee requested that Plaintiff undergo an independent medical evaluation by a neurologist and psychiatrist to assist the Committee in the evaluation process.

After agreeing to undergo the evaluations, Plaintiff failed to appear at scheduled appointments and notified Eli Lilly in writing that she would not undergo the medical examinations as originally planned.

The Committee met on November 13, 2002, to review the claim for benefits, concluding that Plaintiff failed to

provide the necessary information to support her entitlement to disability benefits. Plaintiff was advised of her right to appeal within 180 days from the receipt of the Committee's letter.

The settlement agreement requires full exhaustion of Eli Lilly's Disability Plan procedures. Until this is accomplished, the court will not consider relieving any party from the terms of the settlement.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 30th day of June, 2001.[1]

/s/ Jose Antonio Fuste
JOSE ANTONIO FUSTE
U. S. District Judge

[1] There is an error on the year it should be 2003.

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Kenia M. Cintrón Parrilla, et al.

V. CIVIL CASE: 99-1229 (JAF)

Eli Lilly Industries, Inc., et al.

DESCRIPTION OF MOTION

Date: 9/25/03 Docket #: 90 MOTION by ALL Plaintiffs| to review the Appeals Committee's decision| and | for oral argument|

O-R-D-E-R

- ☐ GRANTED
- ☐ DENIED
- ☐ NOTED
- ☐ MOOT

Denied.

11/20/03
Date

/s/ Jose A. Fuste
Jose A. Fuste
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Kenia M. Cintrón Parrilla, et al.

v. CIVIL CASE: 99-1229 (JAF)

Eli Lilly Industries, Inc., et al.

DESCRIPTION OF MOTION

Date: 12/8/03 Docket #: 97 MOTION by ALL Plaintiffs | for Reconsideration of [95-1] order| and | to established in writing the reasons for the denial of motion for review|

O-R-D-E-R

- ☐ GRANTED
- ☐ DENIED
- ☐ NOTED
- ☐ MOOT

The reasons appear from the record and are summarized in docket 93.

12/17/03
Date

/s/ Jose A. Fuste
Jose A. Fuste
United States District Judge

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
DISTRICT OF PUERTO RICO

Notice of Electronic Filing

The following transaction was received from mrj, entered on 2/25/2004 at 2:45 PM AST and filed on 2/25/2004

Case Name: Cintron-Parrilla, et al v. Eli Lilly Industries, et al

Case Number: 3:99-cv-1229

Filer:

WARNING: CASE CLOSED on 08/14/2002

Document Number: 101

Docket Text:

ORDER [re]: [99] Motion requesting Order - The motion for reconsideration has been properly documented and denied. Signed by Judge Jose A Fuste on 2/25/04. (mrj,)

APPENDIX H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
DISTRICT OF PUERTO RICO

Notice of Electronic Filing

The following transaction was received from mrj, entered on 2/25/2004 at 2:51 PM AST and filed on 2/25/2004

Case Name: Cintron-Parrilla, et al v. Eli Lilly Industries, et al

Case Number: 3:99-cv-1229

Filer:

WARNING: CASE CLOSED on 08/14/2002

Document Number: 102

Docket Text:

ORDER finding as moot [100] Motion to Withdraw as Attorney; finding as moot [100] Motion for extension of time, finding as moot [100] Motion for extension of time. This case is closed for all purposes. Signed by Judge Jose A. Fuste on 2/25/04. (mrj,)

APPENDIX J

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA,
Plaintiff,

v. Civil No. 99-1229 (JAF)

ELI LILLY DEL CARIBE, INC.,
et al.,
Defendants

OPINION AND ORDER

Plaintiff, Kenia M. Cintrón-Parrilla, ("Cintrón") brings this action against Defendants, inter alia, Eli Lilly Industries, Inc., ("Lilly"); and Health Welfare and Disability Plan, Lilly del Caribe, Inc. ("the Plan"); pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461 (1994). Plaintiff alleges illegal termination of her employment and seeks to recover lost benefits.

In our Opinion and Order dated March 31, 2000, we granted summary judgment for Defendants on the basis of res judicata. See Docket Document No. 21. Plaintiff now moves for reconsideration on two alternative grounds.

I.

Factual Synopsis

Lilly maintains "The Eli Lilly Puerto Rico Extended Disability Plan" for its employees. Docket Document No. 11. The plan is administered by Lilly's Employee Benefits Committee. Id.

In March 1997, Plaintiff's former employer, Defendant Lilly, assigned her a project which required her to use a computer for approximately six to seven hours per workday. Docket Document No.1. Plaintiff alleges that in April 1997 she began suffering back pain which radiated to her extremities and caused intense pain, weakness, numbing, and involuntary twitching. Id.

On June 2, 1997, Plaintiff visited a private neurologist, Dr. Tomas Hernandez, who diagnosed her with bilateral carpal tunnel syndrome and thoracic outlet syndrome. Id. Two weeks later, on June 17, 1997, Plaintiff informed the Director of Human Resources at Lilly, Mr. Ricardo Flores, of Dr. Hernandez' diagnosis. Id. Flores referred Plaintiff to the company's in-house doctor, Dr. Felix Matos. Id. Dr. Matos referred Plaintiff to the State Insurance Fund. Id.

On June 18, 1997 Plaintiff allegedly asked Flores and Raquel Llivina, a human resources manager, about her options for receiving a salary and other benefits. Docket Document No. 14, Exh. A. Flores and Llivina purportedly told Plaintiff that her salary would be secure if she went to her medical appointments with the State Insurance Fund, and if she attended her appointments with Dr. Matos or kept in contact with the doctor about her medical status. Id. Flores and Llivina allegedly told Plaintiff that at that time, she was only eligible for a supplemental sickness leave of absence with pay. Id.

On June 20, 1997, Plaintiff visited the State Insurance Fund physician, who ordered her to rest, after he concluded that Plaintiff's medical condition was work-related. Docket Document No. 1.

On June 25, 1997, Llivina informed Plaintiff that there were doubts that her condition was work-related and that an employee from the Industrial Hygiene Section, Mrs. Lydianne Sécola, was going to evaluate Plaintiff's work area. Id.. Sécola assessed Plaintiff's work area two days later and made recommendations about improving Plaintiff's working conditions. Docket Document No. 14, Exh.A.

Plaintiff attended her appointment with Dr. Matos on June 27, 1997. Id. During that appointment, Plaintiff alleges that Dr. Matos did not examine her. Docket Document No.1. On July 2, 1997, Plaintiff was purportedly notified by Llivina that her leave was being classified as regular sick leave. Docket Document No. 14, Exh. A. Llivina allegedly informed Plaintiff that Dr. Matos and Sécola were skeptical that Plaintiff's injuries were work-related. Docket Document No. 1. After two more appointments with Plaintiff, Dr. Matos referred her to Dr. Marcos U. Ramos, a contract physiatrist at Lilly. Id.

On August 15, 1997, Plaintiff met with Flores, Llivina, and Dr. Matos, all of whom Plaintiff alleges agreed that if she underwent the specialized neurological examinations and the tests reflected bilateral carpal tunnel syndrome or thoracic outlet syndrome, they would consider her injuries to be work-related, retroactive to June 18, 1997. Id.

On August 21, 1997, Plaintiff attended another appointment with Dr. Matos, in which he informed her that Dr. Ramos had concluded that her symptoms were systemic, i.e., produced in her own body. Id. One week later, Llivina telephoned Plaintiff and informed her that her condition was not work-related, that her employer was

waiting for additional tests, and that Plaintiff would receive regular sick pay. Id. Plaintiff allegedly asked Llivina about her options for benefits, and Llivina purportedly told Plaintiff that she could only qualify for SINOT, a local benefits program, if she was treated by the State Insurance Fund. Docket Document No. 14. Exh. A. Llivina allegedly informed Plaintiff that she could not respect the agreement made on August 15, 1997. Id.

On August 29, 1997, Plaintiff went to see Dr. Florencio Lao, a physiatrist. Id. Dr. Lao performed an electromyography which confirmed the conclusions of Plaintiff's private neurologist, Dr. Hernandez: Plaintiff was diagnosed with bilateral carpal tunnel syndrome and thoracic outlet syndrome. Id. Plaintiff presented these results to Flores on September 3, 1997, at which time he allegedly informed her that until the evaluating committee determined that her case was work-related, she should not continue to use her health plan to pay for her treatment. Docket Document No.1.

The next day, Plaintiff met with Llivina, who informed Plaintiff that her case would be reassessed by an internal committee. Docket Document No. 14. Exh. A. Llivina told Plaintiff that the committee was composed of Flores; Llivina; Luz E. Soto, Lilly's Compliance Officer and Plaintiff's immediate supervisor; Evelyn Rodríguez, Lilly's Quality Assurance Director; Dr. Matos; and Sécola. Id. Plaintiff alleges that Llivina never informed her that this committee the Employee Benefits Committee that administered the Plan. Id.

On September 25, 1997, Plaintiff again visited Dr. Matos, who informed her that he had seen Dr. Lao's report

and that he would discuss it with the evaluating committee. Docket Document No.1.

Following an October 17, 1997 appointment with Dr. Matos, in which the physician allegedly informed Plaintiff that her condition of thoracic outlet syndrome was evident and that he was going to give her a favorable recommendation, Llivina informed Plaintiff that she was granted a medical leave without pay and that the evaluating committee was reconsidering her request for benefits in light of Dr. Lao's report. Id. At this time, Plaintiff purportedly asked about other benefits to which she might be entitled under Lilly's policy. Docket Document No. 14. Exh. A.

Sometime during September or October 1997, Plaintiff saw Dr. Hernandez, who allegedly told her that if she continued to perform the same work at Lilly, she would eventually develop a permanent disability. Id.

Plaintiff's attorney, Juan Hernandez Rivera, sent a letter dated November 24, 1997 to Flores requesting disability compensation based on the fact that the State Insurance Fund had concluded that Plaintiff's condition was work-related. Id.

Carl Schuster, Lilly's legal counsel, informed Plaintiff's attorney in a letter dated December 15, 1997 that Plaintiff's claim had been evaluated and that she was not entitled to receive any supplementary payments due to an occupational illness. Id.

Plaintiff's attorneys responded by writing to Schuster to request a copy of Lilly's procedure for awarding disability benefits to employees, Docket Document No. 1, as well as the grounds upon which Plaintiff's request had been denied.

Docket Document No. 14. Exh. A. In February 1998, Plaintiff allegedly wrote to Flores and Llivina on two occasions, seeking written information about her case and the basis upon which her request for disability benefits had been denied. Id.

On May 19, 1998, Plaintiff allegedly went to Flores' office and requested long-term disability benefits. Id. Flores purportedly told Plaintiff that, as an employee, she herself could not complete a claim form applying for disability benefits, and that Dr. Matos' recommendation was required. Id. Plaintiff alleges that she once again requested information regarding Lilly's procedures for evaluating disability claims. Id. That same day, Plaintiff met with Dr. Matos. Docket Document No. 11. Exh. 8. Dr. Matos' initial determination was that Plaintiff did not qualify for extended disability benefits. Id. Nonetheless, he promised to review her record and make a decision within two weeks. Id. The record does not show whether Dr. Matos made a subsequent determination regarding Plaintiff's eligibility for long-term disability benefits.

On December 23, 1998, Lilly terminated Plaintiff's employment, effective December 22, 1998. Docket Document No. 22.

On January 11, 1999, Plaintiff and her husband purportedly attended a meeting with Rivera and Rodríguez. See id. At the meeting, Rivera allegedly informed Plaintiff that she was not entitled to receive disability benefits under the Plan because Plaintiff had not requested benefits during her employment with Lilly. See id. Plaintiff purportedly then delivered to Rivera a written claim for long-term disability benefits under the Plan. See id.

Rivera wrote a letter dated February 2, 1999 to Plaintiff informing her that her request for long-term disability benefits could not be processed because Plaintiff had failed to comply with company policy. Docket Document No. 11, Exh. 10. At that time, Rivera occupied the position of Director of Human Resources. See id. Rivera's letter stated that, pursuant to Plaintiff's request for disability benefits in May 1998, Plaintiff had been asked to return to the Industrial Medicine Department, submit medical records, and contact Dr. Matos. Id. According to Rivera, Plaintiff did not comply with these procedural requirements. Id. The letter did not inform Plaintiff of her right to file an administrative appeal of the denial of disability benefits. Docket Document No. 22.

II.

Procedural History

On May 5, 1998, Plaintiff, her husband, their conjugal partnership, and their three children filed suit in the Puerto Rico Court of First Instance, Carolina Superior Section, against Lilly; Felix Matos, In-House Doctor at Lilly; Ricardo Flores, Human Resources Director of Lilly; Raquel Llivina, Human Resources Leader at Lilly; Luz E. Soto, Compliance Officer at Lilly; Lydianne Sécola, Industrial Hygiene Technician at Lilly; Evelyn Rodríguez, Supervisor at Lilly; Dr. Marcos Ramos, contract Physiatrist at Lilly; and Insurance Agencies A, B, and C, seeking benefits under Lilly's Short-and Long-Term Disability Plans.

Plaintiffs maintained that the medical evidence which Cintrón submitted to Lilly certified that she suffered from a work-related disability which made her eligible for benefits

under the two Disability Plans and that she had complied with all requirements for eligibility in the Plans.

Specifically, Cintrón claimed entitlement to benefits equivalent to at least one year's salary, approximately $60,044; Short-Term Disability Plan benefits of approximately $20,000; and extra-contractual benefits of $1,175,000 for mental anguish.

Defendants removed the case to this court on June 4, 1998. On June 23, 1998, Defendants moved to dismiss alleging that: (1) ERISA preempted Plaintiffs' claims; (2) Plaintiffs were not entitled to recover extra-contractual damages; and (3) Defendants Rodríguez, Llivina, Matos, Sécola, Flores, and Soto were not liable in their individual capacities and, thus, were not proper Defendants. Plaintiffs opposed Defendants' motion.

This court dismissed the case in its entirety. See Cintrón Parrilla v. Lilly del Caribe No. 98-1630 (D.P.R. Dec. 7, 1998). Plaintiffs appealed that decision on December 29, 1998, and then moved to withdraw the appeal on March 29, 1999. The First Circuit granted Plaintiffs' request to withdraw the appeal March 31, 1999 on March 31, 1999.

On March 16, 1999, Plaintiff filed the present action pursuant to Sections 502(a)(1)(B) and 502(c)(1)(B) of ERISA. Docket Document No. 1. Plaintiff is seeking $20,000 in short-term disability benefits, $61,000 in long-term disability benefits, $100,000 for the alleged loss of her disability retirement pension, half of her average salary from the past five years in pension-plan benefits, statutory penalties of at least $79,000 for failure to provide requested information about the Plan, as well as $10,000,000 in punitive damages. Id.

On May 21, 1999, Defendant Lilly moved for summary judgment on the grounds of res judicata. Docket Document No. 5. On August 11, 1999, Defendant, the Plan, joined Lilly's motion for summary judgment, and argued three alternatives grounds for summary judgment: (1) Plaintiff failed to exhaust her administrative remedies before filing her complaint; (2) Plaintiff failed to state a claim pursuant to section 502 (c)(1)(B) of ERISA; and (3) Plaintiff's claim for punitive damages is not actionable under ERISA. Docket Document No. 11.

On March 31, 2000, we granted Defendants' motion for summary judgment based upon doctrine of res judicata. Plaintiff moves for reconsideration on the following grounds: (1) Rule 41(b) of the Federal Rules of Civil Procedure denied Plaintiff's due process rights; and (2) res judicata does not apply because new facts occurred subsequent to the December 7, 1998 judgment.

III.

Summary Judgment Standard

The standard for summary judgment is straightforward and well-established. A district court should grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); see Lipsett v. University of P.R., 864 F.2d 881, 894 (1st Cir.1988). A factual dispute is "material" if it "might affect the outcome of the suit under the governing law," and "genuine" if the evidence is such that "a reasonable jury

could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The burden of establishing the nonexistence of a genuine issue as to a material fact is on the moving party. See Celotex Corp. v. Catrett, 477 U.S. 317, 330 (1986). (Brennan, J., dissenting). This burden has two components: (1) an initial burden of production, which shifts to the nonmoving party if satisfied by the moving party; and (2) an ultimate burden of persuasion, which always remains on the moving party. See id.. In other words, "[t}he party moving for summary judgment... bears the initial burden of demonstrating that there are no genuine issues of material fact for trial. Hinchey v. NYNEX Corp., 144 F.3d 134, 140 (1st Cir. 1998). This burden "may be discharged by 'showing'... that there is an absence of evidence to support the nonmoving party's case." Celotex, 477 U.S. at 325. After such a showing, the "burden shifts to the nonmoving party, with respect to each issue on which he has the burden of proof, to demonstrate that a trier of fact reasonably could find in his favor." DeNovellis v. Shalala, 124 F.3d 298, 306 (1st Cir. 1997) (citing) Celotex, 477 U.S. at 322-25).

Although the ultimate burden of persuasion remains on the moving party and the court should draw all reasonable inferences in favor of the nonmoving party, the nonmoving party will not defeat a properly supported motion for summary judgment by merely underscoring the "existence of some alleged factual dispute between the parties"; the requirement is that there be a genuine issue of material fact Anderson, 477 U.S. at 247-48; Goldman v. First Nat'l Bank of Boston, 985 F.2d 1113, 1116 (1st Cir. 1993). In addition, "[f] actual disputes that are irrelevant or unnecessary will

not be counted." Anderson, 477 U.S. at 248. Under Rule 56(e) of the Federal Rules of Civil Procedure, the non-moving party "may not rest upon the mere allegations or denials of the adverse party's pleading, but... must set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); see also Anderson, 477 U.S. at 256. Summary judgment exists to "pierce the boilerplate of the pleadings," Wynne v. Tufts Univ. Sch. of Med., 976 F.2d 791, 794 (1st Cir. 1992), and to "determine whether a trial actually is necessary." Vega-Rodríguez v. Puerto Rico Tel. Co., 110 F.3d 174, 178 (1st Cir. 1997).

IV.

Analysis

The doctrine of res judicata prohibits a claim from being litigated repetitiously outside of the normal appeals process and furthers the goals of finality and certainty. For res judicata to apply, three requirements must be met: "(1) a final judgment on the merits in an earlier action; (2) a sufficient identity between the parties in the two suits; and (3) a sufficient identity of the causes of action in the two suits." Oztiz-Cameron v. Drug Enforcement Admin., 139 F.3d 4, 5(1st Cir. 1998) (citing Porn v. National Granqe Mut. Ins. Co., 93 F.3d 31, 34 (1st Cir. 1996)). "Under the federal law of res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were raised or could have been raised in that action." Apparel Art Int'l, Inc. v. Amertex Enter. Ltd., 48 F.3d 576, 583 (1st Cir. 1995).

In our Opinion and Order dated March 31, 2000, we held that Plaintiff's claims were barred by res judicata. First, we found that there was a final judgment on the merits, i.e.,

the December 7, 1998 judgment which dismissed the case for failure to state a claim upon which relief could be granted. Second, we found that sufficient identity existed between the parties: Both Plaintiff and Lilly were parties to the prior adjudication along with other parties. Finally, we found that the cause of action of both suits arose out of Plaintiff's employment relationship with Defendant and Plaintiff's claim of entitlement to disability benefits.

A. New Facts

Upon reconsideration, Plaintiff argues for the first time that the doctrine of res judicata cannot be applied where significant new facts occurred subsequent to the original judgment. Docket Document No. 22.

The doctrine of res judicata extends only to facts that existed at the time the original judgment was rendered. See e.g., Griego v. Padilla, 64 F.3d 580, 585 (10th Cir. 1995); Jaffree v. Wallace, 837 F.2d 1461, 1469 (11th Cir. 1988); Clark v. Yosemite Cmty. Coll., 785 F.2d 781, 789 (9th Cir. 1986); City of Canton v. Maynard, 766 F.2d 236, 239 (6th Cir. 1985). A previous judgment does not preclude a second lawsuit based on the same activity only if the subsequent conduct was broader and more extensive than the conduct that had triggered the original complaint. Walsh v. Int'l Longshoremen's Ass'n, 630 F.2d 864, 873 (1st Cir. 1980).

In this case, the dismissal of the original complaint was entered into the docket on December 7, 1998, Docket Document No.5. Subsequently, significant acts occurred. On December 23, 1998, Lilly terminated Plaintiff's employment. Docket Document No. 22. On January 11, 1999, plaintiff and her husband purportedly attended a meeting with Ileana Rivera, Lilly's Human Resources

Director, and Evelyn Rodríguez, Lilly's Quality Assurance Director. See id. At the meeting, Rivera allegedly informed Plaintiff that she was not entitled to receive disability benefits under the Plan because Plaintiff had not requested benefits during her employment with Lilly. See id. Plaintiff alleges that she delivered to Rivera a written claim for long-term disability benefits under the Plan. See id. On February 2, 1999, Rivera allegedly notified Plaintiff in writing that she did not qualify for extended disability benefits under the Plan. See id. This letter purportedly did not inform Plaintiff of her right to file an administrative appeal of the denial of benefits. See id.

We find that the events of December 1998 through February 1999 constitute substantial new facts that preclude application of res judicata. While the original suit was pending, Plaintiff was still an employee of Lilly. Federal law prohibits retaliating against an employee for exercising rights accorded to her under ERISA. See 29 U.S.C. § 1140 (1994).[1] On December 23, 1998, following dismissal of the original complaint, Defendant Lilly allegedly terminated Plaintiff's employment to quash her claim for disability benefits. Docket Document No.1. The purported conduct

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[1] Section 1140 of Title 29 of the United States Code provides:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan [or] this subchapter, . . . or for the purpose of interfering with the attainment of any right to which such participant may become entitled under this plan [or] this subchapter.

29 U.S.C. § 1140 (1994).

was more far-reaching than the conduct that triggered the original lawsuit, thereby foreclosing application of the doctrine of res judicata.

Since the original ground for granting Defendants' summary judgment motion cannot stand, we now consider the other grounds for summary judgment advanced by Defendant the Plan.

B. Exhaustion of Administrative Remedies

Defendant the Plan seeks summary judgment on the ground that Plaintiff failed to exhaust the Plan's administrative remedies prior to the filing of the complaint. Docket Document No. 11.

A claimant generally must exhaust her administrative remedies prior to bringing an ERISA suit in federal court. Drinkwater v. Metro. Life Ins. Co., 846 F.2d 821, 825-26 (1st Cir. 1988).

According to the Plan's policy, the procedure for filing claims is as follows:

> 6.01 Time Requirements for Claims.
>
> (a) Notice of Claim. An Employee who intends to file a claim for a Disability Benefit must notify the Employee Benefits Committee in writing within 30 days from the date on which the Disability commences.
>
> (b) Proof of Claim. An Employee must provide the Employee Benefits Committee with proof of the Employee's entitlement to a Disability Benefit within 90 days after the expiration of the 30-day period described in paragraph (a)....

Docket Document No. 11. Exh. 1. An employee seeking disability Benefits must provide the Employee Benefits Committee with the following information: the date on which the disability began; the cause of the disability; the nature of the disability; the name and address of the employee's physician; and other relevant information. See id. If an employee fails to provide such information, her claim for disability benefits will be denied. See id. The Employee Benefits Committee may require that an employee be examined by a physician or other expert chosen by the Committee to ascertain extent and nature of the employee's disability. See id.

Defendant the Plan argues that Plaintiff did not comply with the procedures established for processing disability claims. Docket Document No. 11. Defendant avers that plaintiff did not even apply for long-term disability benefits. Id. According to Defendant, the February 2, 1999 letter from Rivera to Plaintiff evidences that Plaintiff did not complete the procedural requirements for filing a claim. Id. In that letter, Rivera informed Plaintiff that she had failed to provide the medical information, attend medical appointments, and contact Dr. Matos, as requested by Defendant. Id.

Defendant the Plan argues that since Plaintiff did not conform to the procedural requirements for claiming disability benefits, she may not seek such benefits through the judicial system. Docket Document No. 11.

Defendant the plan relies on Tarr v. State Mut. Life Assurance Co., 913 F.Supp. 40 (D. Mass. 1996). In that case, the court found that the plaintiff had not exhausted his administrative remedies before filing an ERISA lawsuit.

Tarr, 913 F. Supp. at 45. The court noted that defendant could not have processed plaintiff's claims without plaintiff first having supplied his records. Id. The court did not allow the plaintiff to block processing of his claim by failing to submit necessary documentation and then bringing litigation when the defendant did not grant plaintiff's request. Id. Defendant maintains that Plaintiff should not be permitted to maintain this lawsuit to claim disability benefits when Plaintiff did not comply with proper administrative procedures for processing claims. Docket Document No. 11.

Plaintiff contends that she was not required to exhaust the administrative remedies provided under the Plan because she was not properly informed of the procedure for seeking disability benefits Docket Document No. 14. Plaintiff submits that since any alleged procedural default was caused by Defendant's failure to provide necessary information to her, any procedural lapse must be excused. See id; Terry v. Bayer Corp., 145 F.3d 28, 40-41 (1st Cir. 1998) (finding that plaintiffs failure to exhaust administrative remedies was egregious because defendant had specifically informed plaintiff about exactly how to appeal the denial of his benefits).

The administrator of an employee benefit plan must provide to employees information about the plan and procedures for filing claims.[2] Pursuant to 29 U.S.C. § 1133

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[2] Section 1021 of Title 29 of the United States Code provides: "The administrator of each employee benefit plan shall cause to be furnished... to each participant covered under the plan... a summary plan description." 29 U.S.C. § 1021 (1994).

Section 1022 of Title 29 of the United States Code stipulates:

(1994), every employee benefit plan must institute a reasonable claims procedure.[3] A reasonable claims procedure is one that "[d]oes not contain any provision, and is not administered in a way, which unduly inhibits or hampers the initiation or processing of plan claims." 29 C.F.R. §2560.503-1(b)(1)(iii) (2000). Plaintiff argues that Defendant breached its legal obligation in failing to inform Plaintiff as to how make an initial claim for disability benefits and how to appeal a denial of such benefits. Docket

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> The summary plan description shall contain the following information:... circumstances which may result in disqualification, ineligibility, or denial or loss of benefits;... the procedures to be followed in presenting claims for benefits under the plan including the office at the Department of Labor through which participants and beneficiaries may seek assistance or information regarding their rights... and the remedies available under the plan for the redress of claims which are denied in whole or in part.
>
> 29 U.S.C. § 1022 (1994).

[3] Section 1133 of Title 29 of the United States Code provides:

> [E]very employee benefit plan shall-
>
> (1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and
>
> (2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

29 U.S.C. § 1133 (1994).

Document No. 14. Plaintiff alleges that she was never informed, either orally or in writing, about the process for filing an initial claim with the Plan. Id. at Exh. A.

A plaintiff need not exhaust her administrative remedies if "the claimant" is wrongfully denied meaningful access to the procedures." DePina v. Gen. Dynamics Corp., 674 F. Supp. 46, 49 (D. Mass. 1987). A plaintiff is not required to resort to administrative procedures if she has not received proper notice about the procedure for vindicating a claim. See Karamshahi v. Northeast Util. Servo Co., 41 F. Supp.2d 101, 104 (D. Mass. 1999); Kodes v. Warren Corp., 24 F. Supp.2d 93, 102 (D. Mass. 1998). On numerous occasions Plaintiff allegedly sought information from Defendant about the procedure for claiming disability benefits. Despite Plaintiff's many requests, Defendant purportedly failed to provide the required information to Plaintiff so that she could properly claim extended disability benefits. Since Plaintiff's failure to conform with administrative procedures resulted from Defendant's own dereliction, we find that Plaintiff's failure to exhaust her administrative remedies is excused.

C. Failure to State a Claim Pursuant to Section 502(c)(1)(B) of ERISA

Plaintiff seeks penalties pursuant to Section 502 (c)(1)(B) of ERISA, 29 U.S.C. § 1132(c)(1)(B), because the Defendant allegedly failed to respond to Plaintiff's request for information about how to seek disability benefits and a retirement pension.[4] Docket Document No .14. Defendant

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[4] Section 1132(c)(1)(B) provides:

> Any administrator... who fails or refuses to comply with a request for any information which such

the Plan argues that Plaintiff has failed to state a claim under Section 502(c)(1)(B) of ERISA for Lilly's alleged failure to provide Plaintiff with information requested by her Docket Document No. 11.

A demand for benefits is not a request for information within the meaning of Section 502(c)(1)(B). Moothart v. Bell, 21 F.3d 1499, 1503 (10th Cir. 1994); Pane v. RCA Corp., 868 F.2d 631, 639 (3d Cir. 1989); Kleinhans v. Lisle Sav. Profit Sharing Trust, 810 F.2d 618, 623 (7th Cir. 1987). Defendant argues that no cause of action lies because Plaintiff has not made the required request for information, as opposed to a demand for benefits. Docket Document No. 11. Defendant maintains that since Plaintiff did not comply with the requirements of Section 502(c)(1)(B), Defendant may not be penalized for failing to send information to her. See id.

Plaintiff allegedly requested information from Flores and/or Llivina on numerous occasions about the procedure for claiming disability benefits.

> administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 per day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

29 U.S.C. § 1132(c)(1)(B) (1994).

On May 19, 1998, Plaintiff faxed to Rivera a letter summarizing the meetings that had taken place that day between Plaintiff and Rivera, and between Plaintiff and Dr. Matos. Docket Document No. 11, Exh. 8. Plaintiff specifically asked for information about the procedures for instituting disability claims and obtaining a pension: "I respectfully request that you provide me with written information on the procedures that I must follow in order to help me process and/or initiate my retirement request and/or grant me a disability pension. Id.

The record evidences that Plaintiff explicitly requested information about the process for filing for disability benefits. In enacting ERISA, Congress sought to meet "a need for a more particularized form of reporting so that the individual participant knows exactly where he stands with respect to the plan-what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, [and] what procedures he must follow to obtain benefits." H.R. REP. No. 93-533 (1973), reprinted in 1974 U.S.C.C.A.N. 4639, 4649. We find that Plaintiff has submitted a request for information about the Plan within the meaning of Section 1132(c)(1)(B).

Defendant also argues that Plaintiff has failed to state a claim because all requests for information were directed to Ricardo Flores, Lilly's former Human Resources Director, instead of the Administrator of the Plan, the Employee Benefits Committee. Docket Document No. 11.

We reject Defendant's argument. The record is not conclusive as to whether Flores was a member of the Employee Benefits Committee. Nevertheless, a person may be regarded as a plan administrator if he controls

administration of the plan. Law v. Ernst & Young, 956 F.2d 364, 372 (1st Cir. 1992). As Human Resources Director, Flores had responsibility for administering the Plan and distributing benefits to employees. For example, the February 2, 1999 letter informing Plaintiff that she had been denied disability benefits was signed by Rivera, who was Director of Human Resources at that time. Docket Document No. 11. Exh. 10. Flores purportedly participated in discussions with Plaintiff about her alleged disability and her eligibility for benefits under the Plan in June 1997, August 1997, and May 1998. Since Flores was so heavily involved with the administration of the Plan, he may be treated as an administrator for purposes of liability under Section 502(c)(1)(B). An employee could reasonably have thought that Flores was acting as administrator of the plan. Varity Corp. v. Howe, 516 U.S. 489, 503 (1996).

D. Punitive Damages

Plaintiff is seeking ten million dollars in punitive damages due to Defendant's alleged bad faith in withholding information about the disability plan Docket Document No.1. Defendant argues that Plaintiff's claim for punitive damages is not compensable under ERISA. Docket Document No. 11.

Section 502 (c)(1)(B) of ERISA provides that a plan administrator who fails to disclose requested information may, at the discretion of the court be held personally liable for a $100/day penalty, and "the court may in its discretion order such other relief as it deems proper." 29 U.S.C. §1132(c)(1)(B). Plaintiff argues that "such other relief" includes punitive damages. Docket Document No. 14.

Punitive damages are not available for a plan administrator's failure to disclose information as required under ERISA Cowden v. Montgomery County Soc'y for Cancer Control, 591 F.Supp. 740, 753 (S.D. Ohio 1984). We find that Plaintiff may not recover punitive damages for Defendant's alleged ERISA violations.

V. Conclusion

In accordance with the foregoing, upon reconsideration, we **DENY** Defendant Lilly's motion for summary judgment. We **GRANT** Defendant the Plan's motion for summary judgment as to Plaintiff's claim for punitive damages, and we **DENY** the Plan's motion for summary judgment as to Plaintiff's other claims.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 15th day of December, 2000.

/s/ Jose Antonio Fuste
JOSE ANTONIO FUSTE
U. S. District Judge

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA, MIGUEL A. GARCIA MENDEZ, and their legal conjugal partnership, Plaintiffs	CIVIL NO. 99-1229 (JAF)
v.	ERISA
ELI LILLY INDUSTRIES, INC.; ELI LILLY DEL CARIBE, INC. and/or LILLY DEL CARIBE, INC.; ELI LILLY INDUSTRIES, INC. HEALTH, WELFARE AND DISABILITY PLAN and/or ELI LILLY PUERTO RICO EXTENDED DISABILITY PLAN; COMPANY X; COMPANY Y; COMPANY A; COMPANY B; COMPANY C; COMPANY D, Defendants	Supplemental Jurisdiction Under 28 U.S.C. § 1367

SECOND AMENDED COMPLAINT

TO THE HONORABLE COURT:

Come now plaintiffs, Kenia M. Cintron Parrilla, Miguel A. Garcia Mendez, and their Legal Conjugal Partnership, by their counsel, and respectfully state, allege and pray as follows:

I. JURISDICTION

1. This Honorable Court has jurisdiction to entertain the ERISA causes of action in this complaint, pursuant to 28 U.S.C. § 1331, and under Sections 502(a)(1)(B) and 502(c)(l)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), and 1132(c)(l)(B).

This Honorable Court has supplemental jurisdiction to entertain the state law cause of action presented in this complaint, pursuant to 28 U.S.C. § 1367.

II. PARTIES

2. Plaintiff Kenia M Cintron Parrilla ("Ms. Cintron"), worked as an employee for Eli Lilly del Caribe, Inc., Puerto Rico Branch, a subsidiary of Eli Lilly Industries, Inc. ("Lilly" or "Eli Lilly"), for approximately twenty (20) years, as a chemist and senior quality assurance representative. As a Lilly employee Ms. Cintron is a participant in all of Lilly's ERISA plans and is entitled to the other Lilly employee benefits.

3. Plaintiff Miguel A. Garcia Mendez is the husband of Kenia M. Cintron Parrilla, and together they form a legal conjugal partnership.

4. Eli Lilly Industries, Inc. Health, Welfare and Disability Plan, and/or Eli Lilly Puerto Rico Extended Disability Plan (the Lilly Plan), is an employee benefit plan and/or employee welfare benefit plan, as those terms are defined in Section 3 (1) and (3) of ERISA, 29 U.S.C. sec. 1002 (1) and (3), and thus subject to the provisions of ERISA, 29 U.S.C. §§ 1001 et seq. The Lilly Plan covers employees and former employees of Eli Lilly Industries, Inc. and/or Eli Lilly del Caribe, Inc., Puerto Rico Branch, and hence it covers the plaintiff Kenia M. Cintron Parrilla.

5. Eli Lilly del Caribe, Inc. and/or Eli Lilly Industries, Inc., ("Lilly" or "Eli Lilly"), is a private corporation doing business in Puerto Rico, with its main business office located in Carolina, Puerto Rico, and it is the administrator and/or fiduciary or trustee of the Lilly Plan for its employees or former employees in Puerto Rico.

6. Company X is the health, welfare and disability plan of the Eli Lilly employees.

7. Company Y is the administrator and/or fiduciary or trustee of the health, welfare and disability plan of the Eli Lilly employees, which is either a natural or juridical person.

8. Company A is the Eli Lilly Puerto Rico Employees Welfare Plan.

9. Company B is the administrator and/or fiduciary or trustee of the Eli Lilly Puerto Rico Employee Welfare Plan.

10. Company C is the Retirement Plan of Eli Lilly Industries, Inc., and/or of Eli Lilly del Caribe, Inc.

11. Company D is the administrator and/or fiduciary or trustee of the Retirement Plan of Eli Lilly Industries, Inc., and/or of Eli Lilly del Caribe, Inc.

III.FACTS

12. In or about March of 1997, plaintiff Kenia Cintron was assigned to work on a project within Eli Lilly, Puerto Rico Branch, which required her to use and manage a computer for approximately six (6) to seven (7) hours daily.

13. In or about April of 1997, plaintiff Kenia Cintron began suffering from acute back pain which radiated to her arms and legs, causing her to feel and have intense and grave pain and numbness in the extremities of her body, as well as weakness, cramps and involuntary muscle twitches

to her body extremities, arms and legs. These ailments, pain and suffering continued to increase in intensity and duration over time.

14. In or about June 10, 1997, Ms. Cintron went to see a private neurologist, Dr. Tomas Hernandez, who, after conducting various medical examinations and analysis on her, diagnosed her with 'bilateral carpal tunnel syndrome"[1] and "thoracic outlet syndrome"[2]. Said neurologist also concluded that such medical conditions were work-related, and proceeded to refer Ms. Cintron to the State Insurance Fund of Puerto Rico ("SIF").

15. On June 17, 1997, plaintiff Kenia Cintron went to work and once there she spoke with Eli Lilly's Human Resources Director, Mr. Ricardo Flores, who was also the administrator or fiduciary, or trustee, or agent of the administrator, of the Eli Lilly's Puerto Rico Extended Disability Plan, and the rest of the Lilly Plans and benefits,

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[1] "Bilateral carpal tunnel syndrome", is the most common syndrome of nerve compression and entrapment, characterized by an abnormal and spontaneous stinging sensation, pangs and night-time numbness of the hands, accompanied by pain, which causes loss of sensation and a breakdown of the median hand nerves; and it affects woman more than men, and is often bilateral. It is caused by the compression and entrapment of the wrist nerve which runs through the carpal tunnel of the wrist.

[2] "Thoracic outlet syndrome", is the aggregate name of a number of conditions attributed to the compression of the blood vessels or nerve fibers anywhere between the base of the neck and the arm pit (axilla). When the patient raises his/her arms, it produces a compression of the subclavicular artery which reduces the amount of blood that goes to the brain, producing dizziness and fainting. In the opinion of the neurologist, Dr. Tomas Hernandez, this condition cannot be corrected surgically.

and also a member of Lilly's Plan Evaluation Committee, and/or Retirement Committee, and/or Associate's Benefits Committee. Ms. Cintron informed Mr. Ricardo Flores that she had visited a private neurologist, and that he diagnosed her with "bilateral carpal tunnel syndrome" and "thoracic outlet syndrome".

16. It is also alleged that Mr. Ricardo Flores, as a member of Lilly's Plan Evaluation Committee, and/or Retirement Committee, and/or Associates' Benefits Committee, was in charge of determining whether Ms. Cintron would qualify or not under the different Lilly Plans and benefits; to wit: SINOT (Temporary Non-Occupational Disability Insurance), Supplementary Payment due to Occupational Accident or illness, Extended Disability Plan, Medical or Personal Leaves of Absence, etc. Mr. Ricardo Flores was an authorized agent of Lilly's Plans.

17. On this same day, June 17, 1997, plaintiff Kenia Cintron also told Eli Lilly's Human Resources Director, Mr. Ricardo Flores, that her private neurologist had referred her to the State Insurance Fund.

18. Also, on June 17, 1997, plaintiff Kenia Cintron spoke with Lilly's in-house doctor, Dr. Felix Matos, and she proceeded to request an appointment with him in order to inform him about her medical condition. Dr. Felix Matos's secretary gave Ms. Cintron an appointment for the following day.

19. It is also alleged that Dr. Felix Matos was also a member of Lilly's Plan Evaluation Committee, and/or Retirement Committee, and/or Associates' Benefits Committee, whose members were in charge of determining whether Ms. Cintron would qualify or not under the Lilly Plans and benefits. Dr. Felix Matos was an authorized agent of Lilly's Plans.

20. On June 18, 1997, plaintiff Kenia Cintron went to work, and during the morning she went to her appointment with Lilly's in-house doctor, Dr. Felix: Matos, who did not perform any medical examination on her. Once there, Ms. Cintron hand-delivered and notified Dr. Felix Matos with a copy of the written referral dated June 17, 1997, signed by the neurologist, Dr. Tomas Hernandez, in which he diagnosed her with the above mentioned medical conditions and added that such conditions were work-related and that she must be referred to the State Insurance Fund.

21. On that same day, June 18, 1997, Dr. Felix Matos filled-out the forms and referred plaintiff Kenia Cintron to the State Insurance Fund. Later, on that same day, Ms. Cintron visited the State Insurance Fund for medical treatment.

22. Also, on June 18, 1997, plaintiff Kenia Cintron, spoke with Mr. Ricardo Flores, Eli Lilly's Human Resources Director, and with Mrs. Raquel Llivina, Eli Lilly's Leader for Human Resources, and informed them about the conversation she had had that morning with Dr. Felix Matos, and that he had referred her to the State Insurance Fund. Ms. Cintron then asked and requested from both of them, to inform her of the options and benefits she had in order to receive her salary pay and other benefits under Eli Lilly's Employees Manual ("Manual del Asociado"). and they both (Mr. Ricardo Flores and Mrs. Raquel Llivina) informed Ms. Cintron that her salary pay was secure under the supplemental payment for work-related illness or disability leave of absence, if she complied with the following conditions: to attend all the medical appointments and examinations of the State Insurance Fund and to attend all the medical appointments given to her by Eli Lilly's in- house doctor, Dr. Felix Matos, or that Ms. Cintron communicate by telephone with Dr. Felix Matos, to

inform him about her medical progress and status at the State Insurance Fund. Ms. Cintron complied with all the above stated conditions.

23. It is also alleged that Mrs. Raquel Llivina was a member of Lilly's Plan Evaluation Committee, and/or Retirement Committee, and/or Associates' Benefits Committee, whose members were in charge of determining whether Ms. Cintron would qualify or not under the Lilly Plans and benefits. Mrs. Raquel Llivina was an authorized agent of Lilly's Plans.

24. Also, on June 18, 1997, Mr. Ricardo Flores and Mrs. Raquel Llivina told Ms. Cintron that the supplemental payment benefit, pursuant to the short term disability plan benefits, was the only benefit that she qualified for at that time under Eli Lilly's Employees Manual.

25. Also, on June 18, 1997, Mr. Ricardo Flores and Mrs. Raquel Llivina told Ms. Cintron that she had to sign a "Medical Records and Information Release Authorization" document, in order to forward it to Medical Card System, Inc., because said company was going to assess her case so as to have her receive temporary and/or short term disability benefits. Ms. Cintron complied with said request on June 19, 1997.

26. On June 19, 1997, plaintiff Kenia Cintron signed and sent by fax to Eli Lilly's Nurse, the "Medical Records and Information Release Authorization" document, and a copy of the green sheet document of the State Insurance Fund, which indicated that Ms. Cintron was under medical treatment and rest. On that same day plaintiff Kenia Cintron telephoned Mrs. Luz E. Soto, who at that time was plaintiff's immediate supervisor, and also Eli Lilly's Compliance Officer, and she told Mrs. Luz E. Soto that Dr. Felix Matos had referred her to the State Insurance Fund,

because she had been diagnosed with "thoracic outlet syndrome" and "bilateral carpal tunnel syndrome".

27. On or about June 25, 1997, Mrs. Raquel Llivina told and informed plaintiff Kenia Cintron, without any scientific basis to support her allegation, that there were doubts as to whether Ms. Cintron's medical conditions were work-related. Mrs. Raquel Llivina also told plaintiff Kenia Cintron that Mrs. Lydianne Sécola, an employee of Eli Lilly's Industrial Hygiene Department, and also a member of Lilly's Plan Evaluation Committee, was going to perform an assessment of Ms. Cintron's work area at Eli Lilly.

28. On or about June 25, 1997, plaintiff Kenia Cintron received a letter from Medical Card System, Inc., a company under contract with Lilly, informing Ms. Cintron that they had certified that she was disabled as of July 5, 1997.

29. That same company, Medical Card System, Inc., also sent additional letters to Ms. Cintron, dated July 22, 1997 and August 26, 1997, in which they certified that she was disabled as of August 20, 1997, and as of September 30, 1997, respectively.

30. On June 27. 1997, plaintiff Kenia Cintron attended an appointment with Dr. Felix Matos, who did not perform any medical examination on her, and only told plaintiff to attend her workplace area assessment which was going to be performed later on that same day (June 27, 1997). Plaintiff Kenia Cintron attended Mrs. Lydianne Secola's assessment of the her workplace area.

31. On July 2, 1997, Mrs. Raquel Llivina informed Ms. Cintron that her salary pay was codified by Eli Lilly as absent on regular sick leave, and that Dr. Felix Matos and Mrs. Lydianne Sécola had doubts as to whether plaintiff's medical conditions were work-related, but that if it was

later found that the conditions were work-related, then Ms. Cintron's leave from work was going to be codified as an occupational sickness with pay, retroactive to June 18, 1997. Later on this same day (July 2, 1997), Dr. Felix Matos informed Ms. Cintron that he could not relate her medical conditions to her work.

32. On July 17, 1997, Ms. Cintron attended another appointment with Dr. Felix Matos, and he did not perform any medical examination on her. On this same day (July 17, 1997), Ms. Cintron gave to Dr. Felix Matos[3] a copy of a Medical Certificate, dated July 16, 1997, signed by plaintiff's neurologist. Dr. Tomas Hernandez, which diagnosed her with Bilateral Thoracic Outlet Syndrome, and also concluded that plaintiff's medical conditions were work-related. Dr. Felix Matos read the aforementioned certification and informed Ms. Cintron that he disagreed with the diagnosis and findings of the neurologist Dr. Tomas Hernandez, and that he was going to refer her to the best neurologist in Puerto Rico.

33. On August 4, 1997, Ms. Cintron visited Dr. Felix Matos, and he did not perform any medical examination on her, but merely referred her to see Dr. Marcos U. Ramos who according to Dr. Felix Matos was a very good neurologist.

34. On August 6, 1997, Ms. Cintron attended the medical appointment with Dr. Marcos U. Ramos, who was not a neurologist, but instead a physiatrist, and he proceeded to perform on her an examination.

35. From August 7, 1997, through August 13, 1997, on various occasions, Ms. Cintron requested in vain a meeting

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[3] Dr. Felix Matos is not a neurologist, nor a physiatrist ("fisiatra"), just a general practitioner.

with Mr. Ricardo Flores, Raquel Llivina, and Dr. Felix Matos, in order to discuss plaintiff's benefits and options for disability benefits and supplementary pay benefits for absence on sick leave under the Eli Lilly's Employee's Manual.

36. On August 15, 1997, Ms. Cintron met with Mr. Ricardo Flores, Mrs. Raquel Llivina, and Dr. Felix Matos and told them that she was worried about her disability case, and the confusing and contradictory events and information that she had experienced in the past weeks concerning her disability conditions. Ms. Cintron requested them to send her to a neck MRI examination, and other neurological examinations, because Dr. Felix Matos had insisted that said examinations were the most powerful proof of her conditions. All three of them opposed Ms. Cintron's request, and instead they all agreed, including the plaintiff, to the following: that Ms. Cintron was going to request the State Insurance Fund to perform on her a neck MRI and other neurological examinations; that Eli Lilly would then pay for the medical examinations to speed-up the process, and that if the additional examinations reflected a bilateral carpal tunnel syndrome and thoracic outlet syndrome, then they would relate her medical conditions to her work, retroactive to June 18, 1997.

37. On the meeting held on August 15, 1997, where Ms. Cintron met with Mr. Ricardo Flores, Mrs. Raquel Llivina, and Dr. Felix Matos, they requested Ms. Cintron to visit once again Dr. Felix Matos on August 21, 1997.

38. On August 21, 1997, Ms. Cintron attended her appointment with Dr. Felix Matos, who did not perform any medical examination on her but only told her that he had

received the Medical Report from Dr. Marcos U. Ramos, and that said report concluded that plaintiff's ailments and conditions were merely systemic.[4]

39. On that meeting held on August 21, 1997, Ms. Cintron questioned Dr. Felix Matos why he had told her that Dr. Marcos U. Ramos was a neurologist, when the truth was that Dr .Marcos U. Ramos was a physiatrist, and Dr. Felix Matos replied that he never told her that, and that it was her word against his word. Dr. Felix Matos also told Ms. Cintron that if she really wanted to get cured from her conditions, to resign and reject the State Insurance Fund's medical treatment, and that he was going to cure her.

40. On August 28, 1997, Mrs. Raquel Llivina called plaintiff on the telephone, and told her that her medical conditions were not work-related because Dr. Marcos U. Ramos's Medical Report stated that she didn't have any medical conditions or illnesses; that Ms. Cintron should wait for the medical examinations to be performed on her by the State Insurance Fund, and that if said medical examinations reflected that plaintiff had a carpal tunnel syndrome or a thoracic outlet syndrome, then the defendants will relate plaintiff's illness to her job duties and work, retroactive to June 18, 1997.

41. On that same telephone conversation held on August 28, 1997, with Mrs. Raquel Llivina, Ms. Cintron asked Mrs. Llivina's advise as to her options and benefits under Eli Lilly's Employees Manual, as well as to any disability benefits provided by Eli Lilly, and Mrs. Llivina told Ms. Cintron that the only benefit she could qualify for was SINOT, but only if Ms. Cintron quit the State Insurance

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[4] It means, produced by Mrs. Cintron's own body

Fund's treatment. Mrs. Llivina also told Ms. Cintron that their agreement made on August 15, 1997, was not going to be respected and implemented by Eli Lilly, and that at that moment in time, Eli Lilly will not provide Ms. Cintron with the supplemental pay benefits for occupational illness or disability, and that, therefore, plaintiff's salary at that time was going to be paid based on the days of sick-leave she had accrued.

42. On August 29, 1997, plaintiff went to visit Dr. Florencio Lao, a physiatrist, who performed on her an electromyographic ("estudio de agujas") test, and other medical tests, which Ms. Cintron paid out of her own pocket. Dr. Florencio Lao issued and signed a medical report dated August 29, 1997, which confirmed the medical conditions initially diagnosed by Ms. Cintron's neurologist, Dr. Tomas Hernandez.

43. On September 3, 1997, Ms. Cintron spoke with Mr. Ricardo Flores, at Lilly's Cafeteria, and she showed him Dr. Florencio Lao's medical report which confirmed the initial diagnosis made by plaintiff's neurologist, Dr. Tomas Hernandez. Mr. Ricardo Flores told Ms. Cintron on that day to resign from the P.R State Insurance Fund's treatment, because Eli Lilly was going to take care and pay for the cure of plaintiff's medical ailments; that plaintiff should report herself to SINOT once she had resigned from the P.R. State Insurance Fund; that the plaintiff should keep using Eli Lilly's medical plan to visit physicians and get a cure for her conditions; and that the plaintiff should make a claim to her medical plan provider, to request reimbursement of the payment made to Dr. Florencio Lao

for his medical examinations and services provided to the plaintiff.

44. On September 4, 1997, Ms. Cintron attended an appointment with Dr. Felix Matos, Eli Lilly's in-house physician. He did not perform any medical examination on the plaintiff. Ms. Cintron gave him a copy of the medical report prepared and signed by Dr. Florencio Lao, and he read it completely, and he said he will discuss said report with the Internal Evaluation Committee that was handling and assessing Ms. Cintron's medical case at Eli Lilly.

45. On this same day, September 4, 1997, Ms. Cintron visited Mrs. Raquel Llivina's office at Eli Lilly, and Mrs. Llivina told Ms. Cintron that she was going to once again assess plaintiff's medical case in conjunction with Eli Lilly's Internal Evaluation Committee, and that said Committee was composed of the following persons: Mr. Ricardo Flores, Human Resources Director; Mrs. Raquel Llivina, Human Resources Leader; Mrs. Luz E. Soto, Compliance Officer and plaintiff's immediate supervisor; Mrs. Evelyn Rodriguez, Quality Assurance Director; Dr. Felix Matos, in-house doctor; and Mrs. Lydianne Secola, from Industrial Hygiene Office.

46. It is specifically alleged that the members of the Internal Evaluation Committee and/or the Retirement Committee, and/or the Associates' Benefits Committee, mentioned in paragraph 45, above, and the Committee, acted also as fiduciaries and/or trustees in-charge of administering Eli Lilly's Extended Disability Plan and the other Lilly Plans and benefits.

47. In September or October, 1997, Ms. Cintron visited her private neurologist, Dr. Tomas Hernandez, who

informed her that if she would have kept doing the work duties she used to do at Eli Lilly, she would eventually have become worse, because she was already permanently disabled.

48. On November 17, 1997, Ms. Cintron visited and was medically examined by her neurologist, Dr. Tomas Hernandez, who told her once again that her medical ailments and conditions were work-related, and that she was disabled to perform any gainful occupational activity.

49. On October 17, 1997, Ms. Cintron attended an appointment with Dr. Felix Matos, Eli Lilly's in-house doctor. He did not perform any medical examination on her. Ms. Cintron hand delivered to Dr. Felix Matos, a copy of new medical evidence which confirmed that Ms. Cintron had a medical condition of Thoracic Outlet Syndrome, and Dr. Felix Matos replied that it was now evident her medical ailments and conditions. Dr. Felix Matos also told Ms. Cintron that he would communicate with officers of Eli Lilly in Indianapolis, in order to continue assessing her medical case, including whether Ms. Cintron could have an option to qualify for disability benefits.

50. However, neither Dr. Felix Matos nor any other member of the Evaluating Committee and/or the Retirement Committee, and/or the Associates' Benefits Committee, communicated with the Lilly officers in Indianapolis regarding Ms. Cintron's condition and disability.

51. Furthermore, it is specifically averred that Dr. Felix Matos and the other members of the Committee did not inform Lilly in Indianapolis about Ms. Cintron's medical condition and disability because they did not believe that Ms. Cintron's condition was work-related.

52. On that same day, October 17, 1997, Ms. Cintron visited Mrs. Raquel Llivina's office at Eli Lilly, and once there Mrs. Llivina hand-delivered to Ms. Cintron a letter dated October 13, 1997, from Eli Lilly, which stated that they had granted to Ms. Cintron a family sick leave of absence from work, without pay, which the plaintiff had not requested.

53. During the conversation held between Ms. Cintron and Mrs. Raquel Llivina on October 17, 1997, Ms. Cintron requested Mrs. Llivina to inform her verbally and in writing of the options and benefits that she was entitled to under Eli Lilly's Employees Manual, including any type of disability benefits. Mrs. Llivina promised Ms. Cintron to provide her said information at a later time, which she never did.

54. On November 14, 1997. Ms. Cintron visited the State Insurance Fund to file a claim there requesting medical treatment, but this time due to emotional distress which got worse when the plaintiff received her salary tab and learned that Eli Lilly was subtracting from her accrued sick leave days, those days that she had been out of work in rest due to her medical sickness and conditions, as ordered by the State Insurance Fund.

55. On or about November 24, 1997. Ms. Cintron's lawyer before the State Insurance Fund, Mr. Juan A. Hernandez Rivera, sent a certified letter on plaintiff's behalf to Mr. Ricardo Flores, Eli Lilly's Human Resources Director, which informed him that Ms. Cintron was entitled, under the employment terms of Eli Lilly, to receive a supplemental payment for disability during a one (1) year period, because the plaintiff's sickness and conditions were work-related. Ms. Cintron's lawyer also informed Mr.

Ricardo Flores through the above mentioned letter, that Eli Lilly had not yet paid to Ms. Cintron the disability benefits she was entitled to.

56. On or about December 15, 1997, Eli Lilly's legal counsel, Mr. Carl Schuster, sent a letter to Ms. Cintron's lawyer before the State Insurance Fund and the Social Security Administration, Mr. Juan A. Hernandez Rivera, informing him that Eli Lilly had evaluated her claim for disability benefits under Eli Lilly's applicable norms and policies, and that it had concluded that Ms. Cintron was not entitled to receive supplemental payments for occupational sickness, but the aforementioned letter did not state nor explain the reasons to support said adverse conclusion and decision.

57. On January 9, 1998, plaintiff's lawyer before the State Insurance Fund and the Social Security Administration, Mr. Juan A. Hernandez Rivera, sent a letter to Eli Lilly's lawyer, Mr. Carl Schuster, requesting him to inform and explain the reasons for denying Ms. Cintron's request for supplemental payments for occupational sickness; and also informed Eli Lilly's lawyer, that it was attaching to said letter a copy of a certification and documents issued by the State Insurance Fund, dated January 8, 1998, in which the State Insurance Fund certified that Ms. Cintron had undergone, and was still receiving, medical treatment at rest since June 18, 1997, for medical conditions related to her job under the following diagnosis: "lumbo sacral strain" and "bilateral strain". Said letter also informed Eli Lilly's lawyer, through the documents attached therein issued by the PR State Insurance Fund, that Ms. Cintron was undergoing treatment at rest with the State

Insurance Fund for an emotional condition, about which a final decision was still pending.

58. On February 3, 1998, Ms. Cintron sent a letter by Fax to Mr. Ricardo Flores and to Mrs. Raquel Llivina, in which she requested once again to be notified of Eli Lilly's decision regarding her benefits and medical case and the reasons for reaching said decision.

59. Also on February 3, 1998, Ms. Cintron sent a letter by fax: to Dr. Felix Matos, Eli Lilly's in house doctor, informing him that his office had cancelled her appointment with Dr. Felix Matos on two (2) occasions; and Ms. Cintron also sent Dr. Felix Matos, by fax, a copy of various medical documents which contained information regarding her medical case at the PR State Insurance Fund.

60. On February 16, 1998, Ms. Cintron sent a letter by fax to Mr. Ricardo Flores and to Mrs. Raquel Llivina, requesting them once again to inform her in writing of Eli Lilly's final decision regarding her medical case and benefits.

61. On February 26, 1998, Ms. Cintron sent a letter by fax to Dr. Felix Matos, informing him the reasons for not attending the appointments of February 25 and 26, 1998, and suggesting new dates for further appointments.

62. On April 15, 1998, Ms. Cintron attended a medical appointment at the State Insurance Fund, and there she was examined by Dr. Maria Hernandez, a neurologist. Dr. Maria Hernandez told Ms. Cintron on that day, that plaintiff's ailments and conditions were work-related; that she had provided the plaintiff all the medical treatment she cold have received; and that plaintiff's medical illnesses and conditions had resulted in a disabling condition.

63. On May 19, 1998, during the morning, Ms. Cintron visited Mr. Ricardo Flores, Eli Lilly's Human Resources Director, and told him that based on her medical illnesses and conditions, she was not able to do any type of work, and that therefore she requested Mr. Ricardo Flores a disability pension. Ms. Cintron requested Mr. Ricardo Flores to provide her with the applicable forms where she could file with Eli Lilly, a formal request or claim for a disability pension.

64. Mr. Ricardo Flores replied to Ms. Cintron during said conversation on May 19, 1998, that what the plaintiff was requesting didn't exist in Eli Lilly, that what they had was an extended disability benefits pension, which cannot be requested by the employee, but rather, that said pension benefit could only be acquired by recommendation and approval of Eli Lilly's in-house doctor, Dr. Felix Matos. Mr. Ricardo Flores also informed Ms. Cintron that in order to find out whether or not she qualified for an extended disability benefit, she had to contact Mrs. Raquel Llivina, Eli Lilly's Human Resources Leader, and request her to coordinate a meeting between the three of them: Mrs. Llivina, Dr. Felix Matos and Ms. Cintron.

65. Ms. Cintron replied to Mr. Ricardo Flores during the above mentioned conversation on May 19, 1998, that she had an appointment on that same day with Dr. Felix Matos, Eli Lilly's in-house doctor; and then Mr. Ricardo Flores informed the plaintiff that the meeting he had just suggested was not necessary, because Ms. Cintron could ask Dr. Felix Matos on that same day regarding her medical case, illnesses, and benefits.

66. It is specially averred that on that same day, May 19, 1998, Ms. Cintron attended her appointment with Dr. Felix Matos, at his office in Eli Lilly, and she informed him that Mr. Ricardo Flores had also send her there to find out about her status as to the extended disability benefits. Dr. Felix Matos told Ms. Cintron that he had not explored that option because she had not previously requested it, and that in order to determine whether or not an employee qualifies for extended disability benefits, the employee must request it in writing, although the evaluation process could begin with a verbal request.

67. That it was on May 19, 1998, the first and only instance in which Eli Lilly's officers provided Ms. Cintron with information and advise regarding the procedures to be followed by her in order to make an initial claim for disability benefits under the Lilly Plan.

68. That the information and advise provided to Ms. Cintron, regarding the procedures to be followed by the plaintiff in order to make an initial claim for disability benefits under the Lilly Plan, as stated in paragraphs 64 and 66 above, was contradictory and confusing because Mr. Ricardo Flores advised the plaintiff of one type of procedure, and Dr. Felix Matos advised her of a completely different set of procedures.

69. Dr. Felix Matos informed Ms. Cintron on that same day, May 19, 1998, at his office, that he had not evaluated her medical case and records thoroughly, and that said assessment could take him from one to two months, in order to determine whether Ms. Cintron qualified or not for extended disability benefits under the Lilly Plan, and that what little he recalled of plaintiff's case and record, he

believed that Ms. Cintron did not qualify for extended disability benefits, but that he would evaluate plaintiff's medical case and records in order to let her know of his preliminary findings in two weeks.

70. On that same day, May 19, 1998, Ms. Cintron hand-delivered to Dr. Felix Matos a copy of the last medical findings and evaluations in plaintiff's possession up to that moment, which included a neurological Questionnaire filled-out by plaintiff's neurologist. Dr. Tomas Hernandez, in which he concluded that Ms. Cintron's prognosis was very poor and that she was totally disabled to perform any gainful activity.

71. On that same day, May 19,1998, Ms. Cintron prepared, signed, and sent a letter by fax, dated May 19, 1998, to Mr. Ricardo Flores, in which she detailed the conversation she had with him and with Dr. Felix Matos on that day of May 19, 1998.

72. In said letter, dated May 19, 1998, Ms. Cintron requested in writing to Mr. Ricardo Flores, Eli Lilly's Human Resources Director. member of the Evaluation Committee of the Lilly Plan, and/or of the Retirement Committee, and/or of the Associates' Benefits Committee, and one of the administrators of the Lilly Plan, to provide her with a copy of the initial claim procedures to be followed by her in order to make an initial claim for extended disability benefits under the Lilly Plan.

73. That on or about August 27, 1998, Ms. Cintron received a medical report dated August 27, 1998, signed by her neurologist, Dr. Tomas Hernandez, in which he diagnosed and concluded that Ms. Cintron was suffering from the following medical conditions: Bilateral Thoracic

Outlet Syndrome, vasculogenic and neurogenic; Bilateral Carpal Tunnel Syndrome, Cervical Bulging Discs; Cervical Radiculopathy; Lumbar Radiculopathy; and Chronic anxiety Reaction with Depressive Features, reactive. In said medical report Dr. Tomas Hernandez concluded that Ms. Cintron was totally and permanently disabled to perform any gainful occupation consistent with her skills and preparation.

74. On or about December 23, 1998, Ms. Cintron received a letter, dated December 23, 1998, signed by the newly appointed Eli Lilly's Human Resources Director, Mrs. Ileana Rivera, in which she informed the plaintiff that Eli Lilly had decided to terminate Ms. Cintron's employment at Lilly effective on December 22, 1998.

75. The members of the Evaluation Committee, and/or the Retirement Committee, and/or the Associates' Benefits Committee, on purpose, delayed the decision as to Ms. Cintron's request for a disability pension so that a year elapsed from the date in which she reported to the State Insurance Fund.[5] This was so with the ulterior purpose of dismissing Ms. Cintron from her job with the additional purpose of developing the argument that since she was no longer an employee, she was not entitled to request her long term disability rights.

76. On January 11, 1998, Ms. Cintron and her husband, coplaintiff Miguel A Garcia Mendez, attended a meeting at Lilly's, to discuss various matters related to her job termination. Present at said meetings were Mrs. Ileana

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[5] The Puerto Rico Statute, 11 L.P .R.A § 7, provides a one year limit for the employee to go back to work after reporting to the State Insurance Fund for medical treatment.

Rivera, the newly appointed Human Resources Director, Mrs. Evelyn Rodriguez, Eli Lilly's Quality Assurance Director, Ms. Cintron, and her husband. In said meeting, Ms. Cintron asked Mrs. Ileana Rivera, among other things, the reason why she wasn't entitled to receive at that moment the disability benefits under the Lilly Plan, and Mrs. Rivera replied that she was not entitled to receive them because she did not request said benefits during the time she was employed at Eli Lilly. Ms. Cintron then informed Mrs. Ileana Rivera, that she had in fact requested previously, both verbally and in writing, to receive the disability benefit under the Lilly Plan, during the time she was an employee at Lilly. Ms. Cintron also informed to Mrs. Rivera, that she had requested said disability benefit through her letter dated May 19, 1998, and up to that moment (January 11, 1999), Lilly had not informed her whether she qualified or not to receive it.

77. On that same meeting held on January 11, 1999, Ms. Cintron hand delivered a letter to Mrs. Ileana Rivera, in which once again she made a written claim for disability benefits under the Lilly Plan. Ms. Cintron also requested to be informed of Lilly's determination regarding the extended disability benefit claimed by her on May 19, 1998, and also once again requested a copy of the written procedures to be followed in order for her to make an initial claim for extended disability benefits under the Lilly Plan.

78. It is specifically averred that as of the date of this second amended complaint, Eli Lilly nor the Lilly Plan have notified personally Ms. Cintron with a copy of the procedures to be followed in order to make an initial claim for extended disability benefits under the Lilly Plan.

79. Ms. Cintron first became aware of the procedures to be followed in order to make an initial claim for extended disability benefits under the Lilly Plan, when she read the extended disability Plan which was submitted by the defendants in their motion for summary judgment.

80. Much after February 2. 1999, Ms. Cintron received a letter dated February 2, 1999 signed by Mrs. Ileana Rivera, Eli Lilly's Human Resources Director, which notified Ms. Cintron that she did not qualify to receive the extended disability benefits under the Lilly Plan, because allegedly Lilly had requested Ms. Cintron some medical information, and allegedly Ms. Cintron failed to provide it; and because Ms. Cintron allegedly failed to communicate with Dr. Felix Matos; and because Ms. Cintron, allegedly, failed to return to Eli Lilly's Industrial Medicine Department. Said letter of denial of extended disability benefits under the Lilly Plan, dated February 2, 1999, did not inform not advise Ms. Cintron of the review (appeal) procedures to be followed by her in order to appeal said denial of disability benefits, in violation of ERISA regulations codified at 29 C.F.R. § 2560.503-1 (f).

81. Said letter dated February 2, 1999, also informed Ms. Cintron that regarding her claim made on January 11, 1999, for extended disability benefits under the Lilly Plan, she did not qualify because said claim made on January 11, 1999, was made after she was terminated from her job.

82. It is specifically averred that Ms. Cintron was never verbally advised by the defendants as to the procedures to be followed by her in order to make an initial claim for extended disability under the Lilly Plan; nor was she verbally informed by the defendants, as to the review

(appeal) procedures to be followed in order to file an appeal from the denial of extended disability benefits under the Lilly Plan.

83. That while being employed at Eli Lilly. Ms. Cintron received a copy of Eli Lilly's Employees Manual dated 1994, which contained a summary plan description (SPD) providing certain information regarding the review (appeal) procedures to be followed in order to file an appeal from the denial of extended disability benefits under the Lilly Plan. That said Employees Manual of 1994 did not contain any written information concerning the procedures to be followed in order to make an initial claim for extended disability benefits under the Lilly Plan.

84. It is specifically averred that the review (appeal) procedures contained in the Plaintiff's copy of the Employees Manual of 1994, were written in a way that the Plaintiff did not understand said review procedures, because they are confusing and disorganized, and because they lack information in order to properly understand said procedures.

85. On or about July 15, 1999, the Social Security Administration approved a disability pension for Ms. Cintron, based on the same medical illness and conditions that she had previously reported on multiple occasions to Eli Lilly and to the Lilly Plan.

86. It is specifically averred that Ms. Cintron was amply justified not to exhaust all the administrative remedies at Eli Lilly, or at the Lilly Plan, because resort to the administrative route was futile, and the remedy was inadequate. The reasons for not exhausting all the administrative remedies, due to futility and/or that the

administrative remedy was inadequate, are, among others, the following: The defendants never informed or advised Ms. Cintron, neither verbally or in writing, of the procedures to be followed by her in order to make an initial claim for extended disability benefits under the Lilly Plan; the defendant's letter of denial of extended disability benefits under the Lilly Plan, dated February 2, 1999, did not informed or advised Ms. Cintron of the review (appeal) procedures to be followed to present her appeal from the denial; the defendants always provided Ms. Cintron with confusing, incomplete and contradictory advise or information regarding her rights and entitlement for benefits under the Lilly Plan; and the denial letter dated February 2, 1999, did not describe or explain, in accordance with 29 C.F.R § 2560.503-1 (f), the specific reasons for the denial, and for the additional materials or documents necessary for the claimant to perfect her claim.

IV. FIRST CAUSE OF ACTION UNDER SECTION 502(a)(1)(B) OF ERISA

87. All the previous allegations made in this complaint are hereby adopted and included in this first cause of action.

88. Pursuant to Section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). Ms. Cintron can bring this civil action in federal court to recover benefits due to her by the defendants under the terms of the Lilly Plan, and or to clarify her rights to future benefits under the terms of the Lilly plan.

89. Ms. Cintron prays that the defendants be ordered to pay her the sum of $71,872.55 for the loss of the short-term disability benefit that she was entitled to. This short-term disability benefit is also known as the "Supplementary

Payment due to Occupational Accident or Illness". This benefit allows the associate to receive her salary for one year minus the compensation amount she receives from the State Insurance Fund, when she is disabled due to an occupational accident or illness. After the year is over if the associate is still disabled then the Extended Disability Insurance comes into effect.

90. In the alternative, if Ms. Cintron's illness or disability was not work-related she had the alternative to use SINOT which would have paid her, after she used her accrued sick leave, 75% of her salary for 8 weeks and 75% of her salary for 18 weeks. However, since Ms. Cintron's disability was work-related and she was under the State Insurance Fund's care, she could not receive the benefit of SINOT. After the six months of payment by SINOT, if the associate is still disabled, then the long term disability or extended disability benefits under the Lilly Extended Disability Plan come into effect.

91. Eli Lilly's Evaluation, or Retirement, or Associate Benefits Committee, did not want to believe that Ms. Cintron's illness and disability were work-related so they did not grant her the Supplemental Payment allowance and Ms. Cintron could not receive the benefit of SINOT either because she was under the care of the State Insurance Fund since according to the SIF her illness and disability were work-related.

92. Ms. Cintron prays that the defendants be ordered to pay her the sum of $242, 172.00, approximately, for the loss of the long-term disability benefits under the Lilly Plan, also known as the extended disability benefits under the Extended Disability Plan. This amount has been

ascertained by using a formula which appears in the Employees (or Associates) Manual and it could vary somewhat depending on amendments or changes not known to plaintiffs at this time.

93. Ms. Cintron prays that the defendants be ordered to pay her the sum of $25,024.44, approximately, when she turns 52 years old; $25,831.68, approximately, when she turns 53 years old; $26,638.92, approximately, when she turns 54 years old; $27,446.16, approximately, when she turns 55 years old; and $28,253.40, approximately, when she turns 56 years old, and every year thereafter until she dies, for the loss of her retirement pension.

94. Ms. Cintron also lost benefits under Lilly's Savings Plan and under the Stock Purchase Plan. These loses are estimated to be, approximately, $7,500.00 per year for a total of $75,000.00 for a 10-year period until retirement. Also, the money she has had to pay for 18 months of her health insurance plan under COBRA.

V. SECOND CAUSE OF ACTION UNDER SECTION 502(c)(1)(B) OF ERISA

95. All the previous allegations in this complaint are hereby adopted in this second cause of action.

96. Pursuant to Section 502(c)(1)(B) of ERISA, Ms. Cintron, as a Lilly Plan participant, can bring this civil action in federal court against the defendants, because the Lilly Plan's administrator, fiduciary or trustee refused or failed to comply with the following request for information made by Ms. Cintron to Lilly's Plan administrator: (1) regarding the procedures to be followed in order to make an initial claim for disability benefits under the Lilly Plan; and (2) on October 17, 1997, Ms. Cintron sent a certified letter

to Mr. Ricardo Flores, Eli Lilly's Human Resources Director, and one of the administrators, fiduciary or trustees of the Lilly Plan, requesting him to provide her in writing with a formal evaluation of her case at Eli Lilly, including a final decision of her case, and all of the information and criteria used to evaluate her case and to reach a final decision, including a copy of all the documents used.

97. It is specifically averred that the defendant Eli Lilly Industries, Inc. and or Eli Lilly del Caribe, wore two (2) hats, one as plaintiff's employer, and the other as the Lilly Plan's administrator, fiduciary or trustee. See *Varity Corp v. Howe.* 516 U.S. 489 (1996).

98. Pursuant to section 502(c)(1)(B) of ERISA, at this Honorable Court's discretion, the Lilly Plan administrator, fiduciary or trustee may be personally liable to Ms. Cintron, in the amount of up to $100.00 a day, from the date of such failure or refusal to provide to the plaintiff the materials or information requested by her within 30 days after such request was made. Under said Section 502(c)(1)(B) of ERISA, each violation for request for inform1ation is treated as a separate violation.

99. It is specifically averred that the information requested by Ms. Cintron to the Lilly Plan administrator, must be provided to the Plaintiff pursuant to ERISA statute and regulations, codified at 29 U.S.C.A. §§ 1021, 1022, and 1024; and 29 C.F.R §§ 2520.102-3, 2520.104a-2, 2520.104a-3, 2520.104b-1, 2520.104b-2, 2520.104b-3, and 2560 .503-1.

100. The plaintiffs in this action prays that the defendants be ordered to pay Ms. Cintron, the sum of $100.00 per day as follows: (1) since October 17, 1997,

until the present date, for the failure or refusal to provide the information requested as to a formal written evaluation of plaintiff's medical case and conditions at Eli Lilly with respect to her benefits, with a final decision, which included all of the information and criteria used to evaluate her case and to reach a final decision, including a copy of the document used, which at the present time amounts 873 days for a total of $83,700.00; and (2) since May 19, 1998 until the present date, for the failure and or refusal to provide the information requested as to the procedures to be followed by Ms. Cintron in order to make an initial claim for extended disability benefits under the Lilly Plan, which at the present time amounts to 622 days, for a total of$ 62,200.00.

VI. THIRD CAUSE OF ACTION FOR PUNITIVE DAMAGES

101. All the previous allegations in this complaint are hereby adopted and included in this third cause of cation.

102. Plaintiff requests punitive damages in the amount of $10,000,000.00, under any section of ERISA other than 409(a), because of defendants' bad faith conduct toward plaintiff, because of defendants' denial of providing plaintiff with information about the employer's disability Plan and the rest of defendants' conduct regarding plaintiff's ordeal.

VII. FOURTH CAUSE OF ACTION UNDER SUPPLEMENTAL JURISDICTION

103. All the previous allegations in this complaint are hereby adopted and included in this fourth cause of cation.

104. This Honorable Court has Jurisdiction to entertain this state law cause of action under supplemental

jurisdiction codified at 28 U.S.C. sec. 136, and as held by the Court of Appeals for the First Circuit in *Drinkwater v. Metropolitan Life Insurance Co.*, 846 F.2d 821, 826-827 (1st Cir. 1988). There, the Court expressly recognized a pendent and/or supplemental cause of action in an ERISA case based on a state law claim for emotional distress of the beneficiary's husband. This emotional distress state law claim in favor of the beneficiary's husband, was recognized by the First Circuit in light of, and despite, the two (2) famous Supreme Court cases, namely; *Pilot Life Insurance Co V. Dedeaux*, 481 US 41 (1987); and *Metropolitan Life Insurance Co. V. Taylor*, 481 US 58 (1997). *Drinkwater*, supra, pages 824, 826-827.

105. Plaintiff Miguel A. Garcia Mendez, who is Ms. Cintron's husband, presents herein this emotional anguish and distress cause of action under the Puerto Rico statute for extra contractual damages, codified at 31 L.P.R.A. § 5141

106. Ms. Cintron received a letter dated February 2, 1999, signed and sent by Mrs. Ileana Rivera, Lilly's Human Resources Director, in which Ms. Cintron was informed that she had been denied her claim of May 19, 1998, for extended disability benefits under the Lilly Plan. Ms. Cintron received said letter of denial of benefits much after February 5, 1999.

107. It is specifically averred that once plaintiff Miguel A. Garcia Mendez had actual knowledge of Eli Lilly's denial decision regarding his wife's claim for extended disability benefits under the Lilly Plan, said plaintiff Miguel Garcia Mendez suffered acute and serious emotional and mental distress and pain, due to defendants' negligent,

outrageous, and bad faith conduct of wrongly denying, on purpose, the disability benefits to his wife; and due to defendants' negligent, outrageous, and bad faith conduct of refusing to provide his wife with the materials, information and advise as to the procedures to be followed by her in order to make an initial claim for extended disability benefits, and as to the procedures to be followed in order to file a review (appeal) claim.

108. It is also alleged that plaintiff Miguel A. Garcia Mendez, also suffered acute and serious mental and emotional distress and pain, due to defendants negligent, outrageous, and bad faith conduct of playing ping-pong with his wife throughout her ordeal at the administrative level, when the defendants provided her with confusing, contradictory and incomplete advise and information as to her rights and benefits as a participant of the Lilly Plan; and by not making and informing his wife with a prompt decision as to her request for short-term and long-term disability benefits; and by not describing or explaining to his wife the reason for the denial of benefits.

109. It is specifically alleged that the defendants' negligent and bad faith conduct was the proximate and direct cause of plaintiff Garcia Mendez's emotional and mental damages.

110. On May 5, 1998, Ms. Cintron and her husband Miguel A. Garcia Mendez filed a civil suit for emotional distress damages in the Puerto Rico Superior Court, Carolina Section. Said suit was removed to federal court under the well-pleaded complaint rule (Civil No, 98-1630 (DRD)). That the case removed to federal court was dismissed on November 30, 1998, through a final judgment

issued on that same day. That the emotional distress state law cause of action pleaded in this complaint in favor of the plaintiff Miguel A. Garcia Mendez, is based exclusively on the letter of denial of benefits dated February 2, 1999, which was received through the mail by Ms. Cintron much after February 2, 1999, and based also in the wrong effects of said denial of benefits to Ms. Cintron, which caused an injustice to his wife, because said benefits were wrongly denied on purpose.

111. Plaintiff Miguel A Garcia Mendez prays that this Honorable Court orders the defendants to pay him the sum of $150,000.00m, for his emotional and mental anguish and distress.

VIII. PRAYER FOR RELIEF

Wherefore, plaintiffs in this action respectfully request from this Honorable Court to enter judgment in their favor, ordering the defendants to award to the plaintiffs as follows:

A. The amount requested for the loss of the short-term disability benefits.

B. The amount requested for the loss of the long-term disability benefits.

C. The amount requested for the loss of the retirement pension.

D. The amounts requested for the loss of the savings, stock, and health insurance plans.

E. The amount requested for the refusal or failure to provide information and/or materials.

F. The amount requested in punitive damages.

G. The amount requested for Ms. Cintron's husband emotional distress state law cause of action.

H. A reasonable amount in attorney's fees, and the costs and expenses of this action.

I. Any other legal or equitable relief that this Honorable Court may deem proper, including the award of pre-judgment interest.

I hereby certify that a true and exact copy of this second amended complaint has been sent by regular mail to defendants' counsel record: Carl Schuster, Esq., P.O. Box 363128, San Juan, P.R. 00936h-3128.

RESPECTFULLY SUBMITTED.

In San Juan, PR, this 2nd day of July, 2001.

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/s/ Guillermo Macari
GUILLERMO MACARI
USDC-PR 206308

APPENDIX L

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRÓN PARRILLA, et al.,
Plaintiff
v
ELI LILLY INDUSTRIES, INC.; ELI LILLY DEL CARIBE INC.; AND/OR LILLY DEL CARIBE, INC.; ELI LILLY INDUSTRIES HEALTH WELFARE AND DISABILITY PLAN AND/OR ELI LILLY PUERTO RICO EXTENDED DISABILITY PLAN; COMPANY X; COMPANY Y; COMPANY A; COMPANY B; COMPANY C; COMPANY D,
Defendants,

Civil No. 99-1229 (JAF)

PRETRIAL ORDER

TO THE HONORABLE COURT:

This matter having come before the court at Pretrial Conference held pursuant to Rule 16 of the Federal Rules of Civil Procedures and Rule 314.4 of the Local Rules of this Court, the following action was taken:

I. COUNSEL FOR THE PARTIES

Plaintiffs, Kenia Cintrón-Parrilla and Miguel García Méndez, by Themselves and in representation of their Legal Conjugal Partnership (hereinafter referred to as "Cintrón"), are represented by attorneys Jesús Hernández Sánchez and Guillermo Macari, Hernández Sánchez Law Firm, First Bank Building, Suite 806, 1519 Ponce de León Ave., San Juan, Puerto Rico 00909-1791, Telephone No. (787) 722-5814/5814.

Co-defendants, Lilly Del Caribe, Inc.[1] (hereinafter referred to as "Lilly") Eli Lilly Industries, Inc., Health, Welfare and Disability Plan and/or Eli Lilly Puerto Rico Extended Disability Plan (hereinafter referred to as the "Plan"), are represented by attorneys, Carl Schuster and Lizette Vélez-Rivé, PO Box 363128, San Juan, Puerto Rico 00936-3128, Telephone (787) 765-4646

II. JOINT NATURE OF CASE

Plaintiffs filed the present action against he appearing co-defendants pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§1001-1461, alleging unjust termination of co-plaintiff Kenia Cintrón's employment and seeking recover lost benefits.[2] Plaintiffs

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[1] Erroneously denominated in the caption as Eli Lilly Industries, Inc., Eli Lilly del Caribe, Inc.

[2] In the Second Amended Complaint, Cintrón alleges, in essence, that she is entitled to following: 1} Short Term Disability and Long Term Disability benefits and to the disability retirement pension, pursuant to Section 502(a)(l)(B) of ERISA; 2) loss of retirement pension; 3) loss of benefits under Lilly's Savings Plan and under the Stock Purchase Plan; 4) a civil action because the Lilly Plan Administrator refused to comply with her requests for information and did not mail the material requested within 30 days after such request,

have also filed supplemental claims under Article 1802 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, §§5141 and 5142. See 28 U.S.C. §1367.

III. FACTUAL VERSION OF THE CASE

A. Plaintiffs' Factual Version of the Case

Plaintiff Kenia M. Cintrón Parrilla, ("Ms. Cintrón") worked as an employee for Eli Lilly del Caribe, Inc., Puerto Rico Branch, a subsidiary of Eli Lilly Industries, Inc. ("Lilly" or "Eli Lilly") for approximately twenty (20) years as a Chemist and Senior Quality Assurance Representative.

In or about March of 1997, plaintiff, Kenia Cintrón, was assigned to work on a project at Lilly which required her to use a computer for approximately six (6) to seven (7) hours daily.

In or about April of 1997, plaintiff began suffering from acute back paint which radiated to her arms and legs, causing her to feel and have intense and grave pain and numbness in the extremities of her body, as well as weakness, cramps and involuntary muscle twitches to her body extremities, arms and legs. These ailments, pain and suffering continued to increase in intensity and duration over time.

On or about June 10, 1997, Ms. Cintrón went to see a private neurologist, Dr. Tomás Hernández, who, after conducting various medical examinations and analysis on her, diagnosed her with "bilateral carpal tunnel syndrome" and "thoracic outlet syndrome". Said neurologist also

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pursuant to Section 502(c)(1)(B) of ERISA and; 5) punitive damages in the amount of $10,000,000.00 under ERISA This cause of action was dismissed by the Court in its Opinion and Order dated December 15, 2000.

concluded that such medical conditions were work related, and proceeded to refer the plaintiff to the State Insurance Fund of Puerto Rico ("SIF").

On June 17, 1997, Ms. Cintrón went to work and once there she spoke with Lilly's Human Resources Director, Mr. Ricardo Flores, who was also the administrator or fiduciary, or trustee, or agent of the administrator, of the Eli Lilly's Puerto Rico Extended Disability Plan, and also a member of Lilly's Plan Evaluation Committee. Ms. Cintrón informed Mr. Ricardo Flores that she had visited a private neurologist, and that he diagnosed her "bilateral carpal tunnel syndrome" and "thoracic outlet syndrome", and that he had referred her to the State Insurance Fund.

Mr. Ricardo Flores was a member of Lilly's Plan Evaluation Committee or Retirement Committee, or Associates' Benefit Committee, whose members were in charge of determine whether Ms. Cintrón would qualify or not under the different Lilly Plans and benefits, to wit: SINOT (Temporary Non-Occupational Disability Insurance), Supplementary Payment due to Occupational Accident or Illness (also referred elsewhere as the "short term disability plan"), Extended Disability Plan (also referred elsewhere as the "long term disability plan"), Medical or Personal Leaves of Absence, etc., Mr. Ricardo Flores was an authorized agent of Lilly's Plan.

Also, on June 17, 1997 Ms. Cintrón spoke with Lilly's in-house doctor, Dr. Felix Matos, and she proceeded to request an appointment with him in order to inform him about her medical condition. Dr. Matos's secretary gave Ms. Cintrón an appointment for the following day.

Like Mr. Ricardo Flores, Dr. Felix Matos was also a member of the Lilly's Plan Evaluation Committee, or Retirement Committee, or Associates' Benefits Committee. Dr. Felix Matos was an authorized agent of Lilly's Plan.

On June 18, 1997, Ms. Cintrón went to work, and during the morning she went to her appointment with Lilly's in house doctor, Dr. Felix Matos, who did not perform any medical examination on her. Once there, Ms. Cintrón hand- delivered and notified Dr. Felix Matos with a copy of the written referral dated, June 17, 1997, signed by the neurologist, Dr. Tomás Hernández, in which he diagnosed her with the above mentioned medical conditions and added that such conditions were work-related and that she must be referred to the State Insurance Fund.

On that same day, June 18, 1997, Dr. Felix Matos filled-out the forms and referred plaintiff, Kenia M. Cintrón, to the State Insurance Fund. Later on that same day, Ms. Cintrón visited the State Insurance Fund for medical treatment.

Also, on June 18, 1997, plaintiff, Kenia Cintrón, spoke with Mr. Ricardo Flores, Eli Lilly's Human Resources Director, and with Mrs. Raquel Llivina, Eli Lilly's Leader for Human Resources, and informed them about the conversation she had that morning with Dr. Felix Matos, and that he had referred her to the State Insurance Fund. Ms. Cintrón then asked and requested from both of them, to inform her of the options and benefits she had in order to receive her salary pay and other benefits under Eli Lilly's Employees Manual (Manual del Asociado), and they both (Mr. Ricardo Flores and Mrs. Raquel Llivina) informed Ms. Cintrón that her salary pay was secure under Lilly's short

term disability plan, if she complied with the following conditions: to attend all the medical appointments and examinations of the State Insurance Fund and to attend all the medical appointments given to her by Lilly's in house doctor, Dr. Felix Matos, or that Ms. Cintrón communicate by telephone with Dr. Felix Matos, to inform him about her medical progress and status at the State Insurance Fund. Ms. Cintrón complied with all the above stated conditions.

Mrs. Raquel Llivina was a member of Lilly's Plan Evaluation Committee, or Retirement Committee, or Associates' Benefits Committee, whose members were in charge of determinining whether Ms. Cintrón would qualify or not under the different Lilly Plans and benefits. Mrs. Raquel Llivina was an authorized agent of Lilly's Plan.

Also on June 18, 1997, Mr. Ricardo Flores and Mrs. Raquel Llivina told Ms. Cintrón that the supplemental pay benefit, pursuant to the short term disability plan, was the only benefit that she qualified for at that time under Lilly's Employees Manual.

Also on June 18, 1997, Mr. Ricardo Flores and Mrs. Raquel Llivina told Ms. Cintrón that she had to sign a Medical Records and Information Release Authorization document, in order to forward it to Medical Card System, Inc., because said company was going to assess her case so as to have her received temporary and/or short term disability benefits. Ms. Cintrón complied with said request on June 19, 1997.

On June 19, 1997, Ms. Cintrón faxed to Lilly's Nurse, the medical records and information release document; and a copy of the green sheet document of the State Insurance Fund, which indicated that Ms. Cintrón was under medical

treatment and rest. On that same day Ms. Cintrón telephoned Mrs. Luz E. Soto, her immediate Supervisor, and Lilly's Compliance Officer, and she told Mrs. Soto that Dr. Félix Matos had referred her to the State Insurance Fund, because she had been diagnosed with "thoracic outlet syndrome" and "bilateral carpal tunnel syndrome".

On or about June 25, 1997, Mrs. Raquel Llivina told Ms. Cintrón that there were doubts as to whether her medical conditions were work related. Mrs. Llivina also told Ms. Cintrón that Mrs. Lydia Sécola, of Eli Lilly's Industrial Hygiene Department, and also a member of Lilly's Plan Evaluation Committee, was going to perform an assessment to Ms. Cintrón's work area.

On or about June 25, 1997, Ms. Cintrón received a letter from Medical Card System, Inc., a company under contract with Lilly, informing Ms. Cintrón that they had certified that she was disabled as of July 5, 1997. That same company also sent additional letters to Ms. Cintrón, dated July 22, 1997, and August 26, 1997, in which they certified that she was disabled as of August 20, 1997, and as of September 30, 1997, respectively.

On June 27, 1997, Ms. Cintrón attended an appointment with Dr. Félix Matos, who did not perform any medical examinations on her, and merely told plaintiff to attend her workplace area assessment which was going to be performed later on that same day. Ms. Cintrón attended Mrs. Lydianne Sécola's assessment of her work place area.

On July 2, 1997, Mrs. Raquel Llivina informed Ms. Cintrón that her salary pay was codified by Eli Lilly as absent on regular sick leave, and that Dr. Félix Matos and Mrs. Lydianne Sécola had doubts as to whether plaintiff's

medical conditions were work-related, but that if it was later found that the conditions were work-related, then Ms. Cintrón's leave from work was going to be codified as an occupational sickness with pay, retroactive to June 18, 1997. Later on this same day (July 2, 1997), Dr. Felix Matos informed Ms. Cintrón that he could not relate her medical conditions to her work.

On July 17, 1997, Mrs. Cintrón attended another appointment with Dr. Felix Matos, and he did not perform any medical examination on her. Ms. Cintrón gave Dr. Matos a copy of a Medical Certificate, dated July 16, 1997, signed by plaintiff's neurologist, Dr. Tomás Hernández, which diagnosed her with Bilateral Thoracic Outlet Syndrome, and also concluded that plaintiff's medical condition were work-related. Dr. Félix Matos read the aforementioned certification and informed Ms. Cintrón that he disagreed with the diagnosis and findings of the Neurologist, Dr. Tomás Hernández, and that he was going to refer her to the best neurologist in Puerto Rico. Dr. Félix Matos is a Generalist, not a Neurologist nor a Physiatrist.

On August 4, 1997, Ms. Cintrón visited Dr. Félix Matos, and he did not perform any medical examinations on her, but merely referred her to see Dr. Marcos U. Ramos who according to Félix Matos was very good Neurologist.

On August 6, 1997, Ms. Cintrón attended the medical appointment with Dr. Marcos U. Ramos, who was not a Neurologist, but instead a Physiatrist ("fisiatra"), and he proceed to perform on her a Physiatrist examination.

From August 7, 1997, through August 13, 1997, on various occasions, Ms. Cintrón requested in vain a meeting with Mr. Ricardo Flores, Raquel Llivina, and Dr. Félix

Matos, in order to discuss plaintiff's benefits and options for disability benefits and supplementary pay benefits for absence on sick leave under the Eli Lilly's Employee's Manual.

On August 15, 1997, Ms. Cintrón met with Mr. Ricardo Flores, Mrs. Raquel Llivina, and Dr. Félix Matos and told them that she worried about her disability case, and the confusing and contradictory events and information that she had experienced in the past weeks concerning her disability conditions. Ms. Cintrón requested them to send her to a neck MRI examination, and other neurological examinations, because Dr. Félix Matos had insisted that said examinations were the most powerful proof of her conditions. All three (3) of them opposed Ms. Cintrón's request, and instead they all agreed, including the plaintiff, to the following: that Ms. Cintrón was going to request State Insurance Fund to perform on her a neck MRI and other neurological examinations; that Eli Lilly would then pay for the medical examinations to speed-up the process, and that if the additional examinations reflected a bilateral carpal tunnel syndrome and thoracic outlet syndrome, then they would relate her medical conditions to her work, retroactive to June 18, 1997.

On the meeting held on August 15, 1997, where Ms. Cintrón met with Mr. Ricardo Flores, Mrs. Raquel Llivina, and Dr. Félix Matos, they requested Ms. Cintrón to visit once again Dr. Félix Matos on August 21, 1997.

On August 21, 1997, Ms. Cintrón attended her appointment with Dr. Felix Matos, who did not perform any medical examination oh her, but only told her that he had received the Medical Report from Dr. Marcos U. Ramos,

and that said report concluded that plaintiff's ailments and conditions were merely systemic.

On August 28, 1997, Mrs. Raquel Llivina called plaintiff on the telephone, and told her that her medical conditions were not work related because Dr. Marcos Ramos' report stated that she didn't have any medical conditions or illnesses; that she should wait for the medical examinations to be performed on her by the State Insurance Fund, and that if said medical examinations reflected that she had a carpal tunnel syndrome or a thoracic outlet syndrome, then defendants were going to relate plaintiff's illness to her job duties and work, retroactive to June 18, 1997.

On that same telephone conversation held on August 28, 1997, with Mrs. Raquel Llivina, Ms. Cintrón asked Mrs. Llivina's advice as to her options and benefits under Eli Lilly's Employees Manual, as well as to any disability benefits provided by Lilly, and Mrs. Llivina told her that the only benefit she could qualify for was SINOT, but only if she resigned to the State Insurance Fund's treatment. Mrs. Llivina also told Ms. Cintrón that their agreement of August 15, 1997 was not going to be respected and implemented by Eli Lilly, and that at that moment in time, Eli Lilly was not going to give her the supplemental occupational pay benefit, or short term disability, and that therefore her salary at that time was going to be paid based on her sick leave days accrued.

On August 29, 1997, plaintiff went to visit Dr. Florencio Lao, a Physiatrist, who performed on her an electromyographic and other medical test, which she paid for herself. Dr. Florencio Lao issued and signed a medical

report dated August 29, 1997, which confirmed the medical conditions initially diagnosed by Ms. Cintrón's Neurologist, Dr. Tomás Hernández.

On September 3, 1997, Ms. Cintrón visited Eli Lilly's Cafeteria, and there she spoke with Mr. Ricardo Flores, telling and showing him Dr. Florencio Lao's medical report, which confirmed the initial diagnosis made by her Neurologist, Dr. Tomás Hernández. Mr. Flores told Ms. Cintrón on that day to resign the State Insurance Fund's treatment, because Lilly was going to take care and pay for the cure of her medical ailments; that she would report her self to SINOT once she had resigned from the State Insurance Fund; that she should keep using Lilly's medical plan to visit physicians and get a cure for her conditions; and that she should make a claim to her medical plan provider to request reimbursement of the payment made to Dr. Florencio Lao for his medical examinations and services.

Also, on September 3, 1997, Mrs. Sandra Ramírez Bey, Supervisor of Occupational Therapy at the State Insurance Fund, Humacao Region, visited Ms. Cintrón's work area at Lilly, performed an evaluation of the area and subscribed a Report, dated September 8, 1997, describing the work environment and making recommendations for improvement.

On September 4, 1997, Ms. Cintrón attended an appointment with Dr. Felix Matos. He did not perform any medical examinations on her. Ms. Cintrón gave him a copy of Dr. Florencio Lao's report, he read it completely, and said he will discuss said report with the Internal Evaluation

Committee that was handling and assessing Ms. Cintrón's medical case at Eli Lilly.

On this same day, September 4, 1997, Ms. Cintrón visited Mrs. Raquel Llivina's office and Mrs. Llivina told her that she was going to once again assess plaintiff's medical case in conjunction with Eli Lilly's Internal Evaluation Committee, and that said Committee was composed of the following persons: Mr. Ricardo Flores, Human Resources Director; Mrs. Raquel Llivina, Human Resources Leader; Mrs. Luz E. Soto, Compliance Officer and Plaintiff's immediate supervisor; Mrs. Evelyn Rodríguez, Quality Assurance Director; Dr. Felix Matos, in-house doctor; and Mrs. Lydianne Sécola, from the Industrial Hygiene Office.

In September or October 1997, Ms. Cintrón visited her private Neurologist, Dr. Tomás Hernández, who informed her that if she would have kept doing the work duties she used to do at Eli Lilly, she would eventually have become worse, because she was already permanently disabled.

On November 17, 1997, Ms. Cintrón visited and was medically examined by her neurologist, Dr Tomás Hernández, who told her once again that her medical ailments and conditions were work-related, and that she was disabled to perform any gainful occupational activity.

On October 17, 1997, Ms. Cintrón attended an appointment with Dr. Felix Matos. He did not perform any medical examination on her. Ms. Cintrón gave Dr. Matos, a copy of new medical evidence which confirmed that she had the medical condition of Thoracic Outlet Syndrome and Dr. Matos replied that it was now evident her medical ailments and conditions. Dr. Matos also told Ms. Cintrón

that he would communicate with officers of Eli Lilly in Indianapolis, in order to continue assessing her medical case, including whether Ms. Cintrón could qualify for disability benefits.

However, neither Dr. Matos nor any other member of the evaluating committee, communicated with the Lilly officers in Indianapolis regarding Ms. Cintrón's condition and disability; because they did not believe that her condition was work-related or, in the alternative, because they thought that Ms. Cintrón was faking her condition as Dr. Marcos U. Ramos, the Physiatrist hired by Lilly, stated in his report.

On that same day, October 17, 1997, Ms. Cintrón visited Mrs. Raquel Llivina's office at Eli Lilly, and once there Mrs. Llivina hand-delivered to Ms. Cintrón a letter dated October 13, 1997, from Eli Lilly, which stated that they had granted a Family and Medical Leave from work, without pay, which Ms. Cintrón had not requested.

During the conversation held between Ms. Cintrón and Mrs. Raquel Llivina on October 17, 1997, Ms. Cintrón requested Mrs. Llivina to inform her verbally and in writing of the options and benefits that she was entitled to under Lilly's Employees Manual, including any type of disability benefits. Mrs. Llivina promised Ms. Cintrón to provide her said information at a later time, which she never did.

On November 14, 1997, Ms. Cintrón visited the State Insurance Fund to file a claim there requesting medical treatment, but this time due to emotional distress which got worse when she received her salary tab and learned that Eli Lilly was subtracting from her accrued sick leave days

those days that she had been out of work in rest due her medical sickness and conditions, as ordered by the SIF.

On or about November 24, 1997, Ms. Cintrón's lawyer before the State Insurance Fund, Mr. Juan A. Hernández Rivera, sent a certified letter on Ms. Cintrón's behalf to Mr. Ricardo Flores, Lilly Human Resources Director, which informed him that Ms. Cintrón was entitled, under the employment terms of Eli Lilly, to receive a supplemental payment for disability (short term disability) during a one (1) year period, because Ms. Cintrón's sickness and conditions were work-related. Attorney, Hernández Rivera also informed Mr. Flores in the letter, that Lilly had not yet paid Ms. Cintrón the disability benefits she was entitled to.

On December 15, 1997, Lilly's legal counsel, Mr. Carl Schuster, answered Mr. Juan A. Hernández Rivera's letter, informing him that Eli Lilly had evaluated Ms. Cintrón claim for disability benefits under Lilly's applicable norms and policies, and that it had concluded that she was no entitled to received supplemental payments for occupational sickness, but the letter did not state nor explain the reasons to support said adverse conclusion and decision.

On January 9, 1998, plaintiff's lawyer at that time, Mr. Juan A. Hernández Rivera, sent a letter to Eli Lilly's lawyer, Mr. Carl Schuster, requesting him to inform and explain the reasons for denying Ms. Cintrón's request for supplemental payments for occupational sickness (short term disability benefit). Attorney, Hernández Rivera, attached to the letter a copy of a certification and documents issued by the State Insurance Fund, dated January 8, 1998, where the SIF certified that Ms. Cintrón had undergone, and was still receiving, medical treatment at

rest since June 18, 1997, for medical conditions related to her job, under the following diagnosis: "lumbo sacral strain" and "bilateral strain". Said letter also informed Eli Lilly's lawyer, through the documents attached therein issued by the SIF, that Ms. Cintrón was undergoing treatment at rest with the SIF for an emotional condition, about which a final decision was still pending.

On February 3, 1998, Ms. Cintrón sent a letter by fax to Mr. Ricardo Flores and to Mrs. Raquel Llivina, in which she requested once again to be notified of Eli Lilly's decision regarding her benefits and medical case and the reason for reaching said decision.

Also on February 3, 1998, Ms. Cintrón sent a letter by fax to Dr. Félix Matos informing him that his office had canceled her medical appointments with him on two (2) occasions. Ms. Cintrón also faxed Dr. Matos copies of various medical documents which contained information regarding her medical case at the State Insurance Fund.

On February 16, 1998, Ms. Cintrón sent a letter by fax to Mr. Ricardo Flores and to Mrs. Raquel Llivina, requesting them once again to inform her in writing of Eli Lilly's final decision regarding her medical case and benefits.

On February 26, 1998, Ms. Cintrón sent a letter by fax to Dr. Félix Matos, informing, him the reasons for not attending the appointments of February 25 and 26, 1998, and suggesting new dates for further appointments.

On April 15, 1998, Ms. Cintrón attended a medical appointment at the State insurance Fund where she was examined by Dr. María Hernández, a Neurologist. Dr. Maria Hernández told Ms. Cintrón on that day, that her

ailments and conditions were work-related; that she had provided her all the medical treatment she could have received; and that her medical illness and conditions had resulted in a disabling condition.

On May 19, 1998, during the morning, Ms. Cintrón visited Mr. Ricardo Flores, Eli Lilly's Human Resources Director, and told him that based on her medical illnesses and conditions, she was not able to do any type of work, and that therefore she requested Mr. Ricardo Flores a disability pension. Ms. Cintrón requested Mr. Flores to provide her with the applicable forms where she could file with Eli Lilly, a formal request or claim for a disability pension.

Mr. Ricardo Flores replied Ms. Cintrón, during said conversation on May 19, 1998, that what she was requesting didn't exist in Eli Lilly, that what they had was an extended disability benefits pension, which cannot be requested by the employee but, rather that said pension benefit could only be acquired by recommendation and approval of Eli Lilly's in-house doctor, Dr. Felix Matos. Mr. Ricardo Flores also informed Ms. Cintrón that in order to find out whether or not she qualified for an extended disability benefit, she had to contact Mrs. Raquel Llivina, Eli Lilly's Human Resources Leader, and request her to coordinate a meeting between the three (3) of them: Mrs. Llivina, Dr. Felix Matos and Ms. Cintrón.

Ms. Cintrón replied to Mr. Flores during the above mentioned conversation on May 19, 1998, that she had an appointment on that same day with Dr. Félix Matos, and then Mr. Flores informed her that the meeting he had just suggested was not necessary, because Ms. Cintrón could

ask Dr. Matos on that same day regarding her medical case, illnesses, and benefits.

On that same day, May 19, 1998, Ms. Cintrón attended her appointment with Dr. Félix Matos, and she informed him that Mr. Ricardo Flores had also sent her there to find out about her status as to the extended disability benefits. Dr. Matos told Ms. Cintrón that he had not explored that option because she had not previously requested it, and that in order to determine whether or not an employee qualifies for extended disability benefits, the employee must request it in writing, although the evaluation process could begin with a verbal request.

This was the first and only instance in which Eli Lilly's officers provided Ms. Cintrón with information and advise regarding the procedures to be followed by her in order to make an initial claim for disability benefits under the Lilly Plan. However, the information and advise provided to Ms. Cintrón, regarding the procedures to be followed by her in order to make a an initial claim under the Lilly Plan was contradictory and confusing because Mr. Flores advised her of one type of procedure, and Dr. Matos advise her of a completely different set of procedures.

Dr. Felix Matos informed Ms. Cintrón on that same day, May 19, 1998, that he had not evaluated her medical case and records thoroughly, that said assessment could take him from one to two (2) months, in order to determine whether Ms. Cintrón qualified or not for extended disability benefit under the Lilly Plan, and that what little he recalled of her case and record, he believed that Ms. Cintrón did not qualify for extended disability benefits, but that he would

evaluate her medical case and records in order to let her know of his preliminary findings in two (2) weeks.

On that same day, May 19, 1998, Ms. Cintrón hand-delivered to Dr. Félix Matos a copy of the last medical findings and evaluations in plaintiff's possession up to that moment, which included a neurological Questionnaire filled-out by her Neurologist, Dr. Tomás Hernández, in which he concluded that Ms. Cintrón's prognosis was very poor and that she was totally disabled to perform any gainful activity.

On that same day, May 19, 1998, Ms. Cintrón prepared, signed, and sent a letter by fax to Mr. Ricardo Flores in which she detailed the conversation she had with him and with Dr. Félix Matos on that day of May 19, 1998.

In said letter, dated May 19, 1998, Ms. Cintrón requested in writing to Mr. Ricardo Flores to provide her with a copy of the initial claim procedures to be followed by her in order to make an initial claim for extended disability benefits under the Lilly Plan.

On May 27, 1998, Lilly's attorneys wrote to Ms. Cintrón's attorneys demanding that she abstain from communicating directly with Lilly. At that moment Ms. Cintrón's direct communication with Lilly was completely interrupted, at Lilly's request, until December 23, 1998 when Lilly sent the termination letter to Ms. Cintrón.

On or about August 27, 1998, Ms. Cintrón received a medical report dated August 27, 1998, signed by her Neurologist, Dr. Tomás Hernández, in which he diagnosed and concluded that Ms. Cintrón was suffering from the following medical conditions: Bilateral Thoracic Outlet Syndrome, Vasculogenic and Neurogenic; Bilateral Carpal

Tunnel Syndrome, Cervical Bulging Discs; Cervical Radiculopathy; Lumbar Radiculopathy; and Chronic anxiety Reaction with Depressive Features, reactive. In said medical report Dr. Tomás Hernández concluded that Ms. Cintrón was totally and permanently disabled to perform any gainful occupation consistent with her skills and preparation.

On or about December 23, 1998, Ms. Cintrón received a letter dated December 23, 1998, signed by the newly appointed Eli Lilly's Human Resources Director, Mrs. Ileana Rivera, in which she informed Ms. Cintrón that Eli Lilly had decided to terminate her employment at Lilly effective on December 22, 1998.

The members of the Evaluation Committee, and/or the Retirement Committee, and/or the Associates' Benefits Committee, on purpose delayed the decision as to Ms. Cintrón's disability pension so that a year elapsed from the date in which she reported to the State Insurance Fund. This was with the ulterior purpose of dismissing Ms. Cintrón from her job with the intentional purpose of developing the argument that since she was no longer an employee, she was not entitled to request her long term disability rights.

On January 11, 1999, Ms. Cintrón and her husband, co-plaintiff, Miguel A. García Méndez, attended a meeting at Lilly's, to discuss various matters related to her job termination. Present at the meetings were Mrs. Ileana Rivera, the newly appointed Human Resources Director, Mrs. Evelyn Rodríguez, Eli Lilly's Quality Assurance Director, Ms. Cintrón and her husband. In said meeting, Ms. Cintrón asked Mrs. Ileana Rivera, among other things, the reason why she wasn't entitled to receive at that

moment the disability benefits under the Lilly Plan, and Mrs. Rivera replied that she was not entitled to receive them because she did not request said benefits during the time she was employed at Lilly. Ms. Cintrón then informed Mrs. Ileana Rivera, that she had in fact requested previously, both verbally and in writing, to receive the disability benefit under the Lilly Plan, during the time she was an employee at Lilly. Ms. Cintrón also informed Mrs. Rivera, that she had requested said disability benefit through her letter dated May 19, 1998, and up to that moment Lilly had not informed her whether she qualified or not to receive it.

On that same meeting held on January 11, 1999, Ms. Cintrón hand delivered a letter to Mrs. Ileana Rivera, in which once again she made a written claim for disability benefits under the Lilly Plan. Ms. Cintrón also requested to be informed of Lilly's determination regarding the extended disability benefit claimed by her on May 19, 1998, and also once again requested a copy of the written procedure to be followed in order for her to make an initial claim for extended disability benefits under the Lilly Plan.

It is specifically averred that as the date of this second amended complaint, Eli Lilly nor the Lilly Plan have notified personally and in writing Ms. Cintrón with a copy of the procedures to be followed in order to make an initial claim for extended disability benefits under the Lilly Plan.

Ms. Cintrón first became aware of the procedures to be followed in order to make an initial claim for extended disability benefits under the Lilly Plan, when she read the Extended Disability Plan which was submitted by defendants in their motion for summary judgment.

Much after February 2, 1999, Mrs. Cintrón received a letter dated February 2, 1999, signed by Mrs. Ileana Rivera notifying her that she did not qualify to received the extended disability benefits under the Lilly Plan, because Eli Lilly allegedly had requested her some medical information, and allegedly she had failed to provide it; and because Ms. Cintrón allegedly failed to communicate with Dr. Félix Matos; and because she, allegedly failed to return to Lilly's Industrial Medicine Department. Said letter of denial of extended disability benefits under the Lilly Plan dated February 2, 1999, did not inform not advise Ms. Cintrón of the review procedures to be followed by her in order to appeal said denial of disability benefits, in violation of ERISA regulations codified at 29 C.F.R. §§2560.503-1(f).

Said letter dated February 2, 1999, also informed Ms. Cintrón that regarding her claim made on January 11, 1999, for extended disability benefits under the Lilly Plan, she did not qualify because said claim made on January 11, 1999, was made after she was terminated from her job.

Ms. Cintrón was never verbally advised by defendants as to the procedures to be followed by her in order to make an initial claim for extended disability under the Lilly Plan; nor was verbally informed by the defendants, as to the review procedures to be followed in order to file an appeal from the denial of extended disability benefits under the Lilly Plan.

While being employed at Lilly Ms. Cintrón received a copy of Eli Lilly Employees Manual dated 1994, which contains a summary plan description (SPD) providing certain information regarding the review (appeal) procedure

to be followed in order to file an appeal from the denial of extended disability benefits under the Lilly Plan, but these was written in a way that Mrs. Cintrón did not understand because they were confusing and disorganized and they lacked information to properly understand said procedures. The employee Manual of 1994, does not contain any written information concerning the procedures to be followed in order to make an initial claim for extended disability benefits under the Lilly Plan.

On or about July 15, 1999 the Social Security Administration approved a disability pension benefits to Mrs. Cintrón, based on the same medical illness and conditions that she had previously reported on multiple occasions to Eli Lilly and to the Lilly Plan.

Ms. Cintrón was amply justified not to exhaust all the administrative remedies at Eli Lilly, or at the Lilly Plan, because resort to the administrative route was futile, and the remedy was inadequate. The reasons for not to exhausting all the administrative remedies, due to futility and/or that the administrative remedy was inadequate, are, among others, the following: the defendants never informed or advised Ms. Cintrón, neither verbally or in writing, of the procedures to be followed by her in order for her to make an initial claim for extended disability benefits under the Lilly Plan; the defendant's letter of denial of extended disability benefits under the Lilly Plan, dated February 2, 1999, did not inform or advised Ms. Cintrón of the review procedures to be followed by the plaintiff in order to present her appeal from the denial; the defendant continuously provided Ms. Cintrón with confusing, incomplete, and contradictory advise or information

regarding her rights and entitlement for benefits under the Lilly Plan; and the denial letter dated February 2, 1999, did not describe or explain, in accordance with 29 C.F.R. §2560.503-1 (f), the specific reasons for the denial, and for the additional materials or documents necessary for the claimant to perfect her claim.

A. Defendants' Factual Version of the Case:

Lilly maintains an extended disability plan for its employees known as the Eli Lilly Puerto Rico Extended Disability Plan, pursuant to the Employee Retirement Income Security Act ("ERISA"). (hereinafter, referred to as the "Plan"). The Plan is administered by Lilly & Company's Employee Benefits Committee.

On September 26, 1997, Cintrón was hired by Lilly as Laboratory Technician. After having occupied various positions, on January 17, 1994, Cintrón was transferred to the position of Process Team Leader. On or around March 1997, plaintiff was assigned as part of her duties to a special project which required her to compare different pharmacopeias and prepare a report stating in essence, the difference among them. Contrary to plaintiff's allegations, this project, however, did not require plaintiff to spend six to seven consecutive hours working with a computer, but much less time.

On or around June 17, 1997, plaintiff spoke with Ricardo Flores, Human Resources Director, at the time, and informed him of the diagnosis given by her Neurologist, Dr. Tomás Hernández. Mr. Flores referred plaintiff to Dr. Félix Matos, Lilly's In-House Doctor. On June18, 1997, plaintiff went to an appointment with Dr. Matos, and gave him a copy of a document from Dr. Hernández, which included a

diagnosis of thoracic outlet syndrome, and stated that the plaintiff should be referred to the State Insurance Fund (hereafter, "SIF"). Consequently, Dr. Matos filled out the forms of the SIF, and referred there Cintrón, were she received treatment. Plaintiff remained out of work while receiving treatment at the SIF.

In response to the medical information provided by plaintiff, on June 27, 1997, Ms. Lydianne Sécola, Lilly's Industrial Hygiene Technician, performed an evaluation of Cintrón work area at Lilly in Cintrón's presence, which revealed that Cintrón had bad posture at her workstation. Ms. Sécola made various recommendations in order to improve plaintiff's work area and conditions, which were implemented, as well as different recommendations that would help plaintiff in performing her duties without causing any physical harm.

Thereafter, and after having attending various medical appointments with Dr. Matos, on August 4, 1997, Cintrón visited Dr. Matos, and referred her to Dr. Marcos U. Ramos, a private Physiatrist for medical evaluation. Dr. Ramos's medical evaluation report revealed that plaintiff was not impaired from performing all her regular occupational duties.

While still out of work and receiving treatment at the SIF, plaintiff visited Dr. Matos on various occasions, but did not mention her intension not to return to work or the fact that she was disabled to perform her job. Therefore, Lilly was under the impression that plaintiff would return to work upon the termination of her short-term disability benefits. On May 19, 1998, however, Cintrón went to Ricardo Flores' office and for the first time, requested to be

granted long-term disability benefits. On this same date, plaintiff visited Dr. Matos and he gave her a follow up appointment in two (2) weeks. Plaintiff did not come to this or any other appointment, called to excuse herself or requested another appointment.

On December 23, 1998, plaintiff was terminated from employment by letter sent by Ileana Rivera. In said letter Ms. Rivera informed plaintiff, among others, that the reserve of employment under Workers Compensation Act had expired, and that she continued to be out of work due to disability, and invited plaintiff to a meeting at Lilly. On January 11, 1999, a meeting was held between Ileana Rivera, Evelyn Rodríguez, Lilly Supervisor, Cintrón and her husband to discuss Cintrón's employment termination. After said meeting, Ms. Rivera verified plaintiff's claim for disability as alleged by plaintiff in the January 11, 1999 meeting. In response to said allegation, on February 2, 1999, Ms. Rivera sent a letter to Cintrón informing her that she had verified the history of her claim for benefits with the Company, that although under the first impression she was informed that she may not qualify, certain medical information was requested from plaintiff in order to comply with the established procedures and that she was given an appointment with Dr. Matos to return in two (2) weeks. Mrs. Rivera further informed plaintiff, that she did not return to Lilly's Industrial Medicine Department, did not submit the required medical results or contacted Dr. Matos again. Ms. Rivera also informed plaintiff that her request for long-term disability in the January 11, 1999, meeting was late, inasmuch as plaintiff's employment had already been terminated.

IV. LEGAL THEORY

A. Plaintiff's Legal Theory:

Pursuant to ERISA §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B), Ms. Cintrón can bring this civil action in federal court to recover benefits due to her by the defendants under the terms of the Lilly Plan, and/or to clarify her rights to future benefits under the terms of the Lilly Plan.

Ms. Cintrón can recover from defendants the sum of $71,872.50 for the loss of the short-term disability that she was entitled to. This short-term disability benefit is also known as the "Supplementary Payment due to the Occupational Accident or Illness". This benefit allows the associate to receive her salary for one (1) year, minus the compensation paid by the State Insurance Fund, when she is disabled due to an occupational accident or illness. This benefit is described in the 1994 Employee Manual (Associates' Manual). Ms. Cintrón was disabled during all this period, according to the State Insurance Fund, several independent medical reports and to the Social Security Administration. Lilly acted in bad faith, arbitrarily, capriciously, and it abused its discretion by denying Ms. Cintrón this short term disability benefit to which she was entitled like any other employee in the same situation Ms. Cintrón disability was work related, and she complied with the requirements of visiting Lilly's in-house physician and of keeping him informed of her progress.

After the year of short term disability is over if the Associate is still disabled, then the Extended Disability Plan comes into effect; according to the Extended Disability Plan's Regulations (which were provided to Ms. Cintrón for

the first time in 1999, in Lilly's motion for summary judgment), to qualify for this benefit it does not matter if the disability is work related or even if it arises from prior condition. If the disability is not work related, then the employee can qualify for the extended disability after the payments by SINOT end. If Ms. Cintrón stays disabled she should received approximately the sum of 242,172.00 in a ten (10) year period as the Extended Disability benefit, according to the formula that appears in the Employee Manual (Associates Manual), which is approximately $2,018.10 per month, until she turns 51 years old and she could retire in either case according to Lilly's formula.

By her termination and denial of disability benefits Ms. Cintrón lost approximately $7,500.00 per year since she could not participate in the savings and the Stock Purchase Plan. She also had to pay for eighteen (18) moths of health insurance under COBRA, and after that she had to pay for her own insurance plan.

Pursuant to Section 502(c)(1)(B) of ERISA, Ms. Cintrón, as a Lilly Plan participant, can bring this action in federal court against the defendants, because the Lilly Plan's administrator, fiduciary, or trustee has refused or failed to comply with the following request for information made by Ms. Cintrón to the Lilly's Plan administrator: (1) regarding the procedures to be followed by Ms. Cintrón in order for her to make an initial claim for disability benefits under the Lilly Plan; and (2) on October 17, 1997, Ms. Cintrón sent a certified letter to Mr. Ricardo Flores, who was the Eli Lilly's Human Resources Director and one (1) of the administrators, fiduciary or trustees of the Lilly Plan, requesting him to provide her in writing with a formal

evaluation of her case at Eli Lilly, including the final decision of her case and all the information and criteria used to evaluate her case and to reach a final decision, including a copy of all the documents used.

The defendant Eli Lilly Industries, Inc. and or Eli Lilly del Caribe, wore two hats, one as plaintiff's employer and the other as the Lilly Plan's administrator, fiduciary or trustee. See Varity Corp v. Howe, 516 U.S. 489 (1996).

Pursuant to section 502(c)(1)(B) of ERISA, at this Honorable Court's discretion the Lilly Plan administrator, fiduciary or trustee may be personally liable to the plaintiff Ms. Cintrón, in the amount of up to $100.00 a day from the date of such failure or refusal to provide plaintiff in writing the materials or information requested by her within (30) days after such request was made. Under said Section 502(c)(1)(B) of ERISA, each violation for request for information is treated as a separate violation.

The information requested by Ms. Cintrón to the Lilly Plan's administrator, must be provided to the Plaintiff pursuant to the ERISA statute and regulations codified as 29 U.S.C.A. §§1021, 1022 and 1024; and 29 C.F.R. §§2520.102-3, 2520.104a-2, 2520.104a-3, 2520.104b-1, 2520.104b-2, 2520.104b-3, and 2560.503-1.

Ms. Cintrón prays that defendants be ordered to pay her the sum of $100.00 per day as follows: (1) since October 17, 1997, until the present date, for the failure or refusal to provide the information requested as to the formal written evaluation of plaintiff's medical case and conditions at Eli Lilly with respect to her benefits, with a final decision, which included all of the information and criteria used to evaluate her case and to reach a final decision, including a

copy of the documents used, which at the present time amounts to 1430 days, for a total of $143,000.00; (2) since January 8, 1998, until the present date, when attorney, Hernández Rivera requested Lilly through its attorney, Carl Schuster, to provide the reasons, information, and documentation related to the denial of the short term disability benefits; (3) since May 19, 1998, until the present date, for failure and or refusal to provide the information requested as to the procedures to be followed by Ms. Cintrón in order to make an initial claim for extended disability benefits under the Lilly Plan.

Ms. Cintrón request punitive damages against defendants in the amount of $10,000,000.00 under any other section of ERISA other than 409(a), because of defendants' bad faith conduct toward her by not providing her with the information about the employer's disability plans and the rest of the defendants conduct regarding Ms. Cintrón's ordeal.

ERISA §510, 29 U.S.C. §1140, makes it unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which she is entitled under the provisions of an employee benefit plan. The members of the Evaluation Committee, and/or the Retirement Committee, and/or the Associates' Benefits Committee, on purpose, delayed the decision as to Ms. Cintrón disability pension so that a year elapsed from the date in which she reported to the State Insurance Fund. This was with the ulterior purpose of dismissing Ms. Cintrón from her job with the additional purpose of developing the argument that since she was no

longer an employee, she was not entitled to request her long term disability rights, thus violating 510 of ERISA.

Plaintiff, Miguel A. García Méndez, who is Ms. Cintrón's husband, present his emotional anguish and distress cause of action under Puerto Rico statue for extra contractual damages codified at 31 L.P.R.A. §5141. Mr. García Méndez's cause of action is based on the letter of denial of benefits, dated February 2, 1999, sent by Mrs. Ileana Rivera, Eli Lilly's Human Resources Director, where Ms. Cintrón was informed that she had been denied her claim of May 19, 1998, for extended disability benefits under the Lilly Plan. When Mr. García Méndez learned of Eli Lilly's denial decision regarding his wife claim for extended disability benefits under the Lilly Plan, said plaintiff suffered acute and serious emotional and mental distress and pain, due to the defendants negligent outrageous and bad faith conduct of wrongly denying, on purpose, the disability benefits to his wife; and due to defendants negligent, outrageous and bad faith conduct of refusing to provide to his wife with the materials, information and advise as to the procedures to be followed by her in order to make an initial claim and an appeal. Mr. García Méndez demands from defendants the sum of $150,000.00 for his emotional and mental anguish and distress caused by them.

This Honorable Court has Jurisdiction to entertain the state law cause of action under supplemental jurisdiction, codified at 28 U.S.C. §1367, and as held by the First Circuit Court of Appeals in Drinkwater v. Metropolitan Life Insurance Co., 846 F2d 821, 826-7 (1st Cir. 1988). There, the Honorable Court of Appeals for the First Circuit

expressly recognized a pendent and/or supplemental cause of action in an ERISA case based on a state law claim for emotional distress of the beneficiary's husband. This emotional distress state law claim in favor of the beneficiary's husband was recognized by the First Circuit in light of, and despite, the two (2) Supreme Court cases: Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41 (1987); and Metropolitan Life Insurance Co. v. Taylor, 481 U.S. 58 (1987). See Drinkwater, supra, pages 824, 826-827.

Pursuant to 29 U.S.C. §1132 (g)(1), plaintiff respectfully request this Honorable Court to grant her request for a reasonable amount in attorney's fees and the cost of this action.

B. Defendants' Legal Theory:

In general terms the procedure that Lilly follows to evaluate disability claims is as follows. Employees who are absent from work due to illness/injury are evaluated by the Puerto Rico Employee Health Service's Department at least once a month. During said visits pertinent information and data is obtained. Laboratory exams and/or second opinions by other physicians may be requested, if necessary. Once the Puerto Rico Employee Health Service's Department physician, Dr. Felix Matos, evaluates all information and submits his recommendation of disability, the case is submitted to the Employee Benefits Committee in the United States for Extended disability consideration.

Plaintiff's first request for disability benefits was made to Mr. Ricardo Flores on May 19, 1998. Thereafter, plaintiff did not comply with the established proceedings, inasmuch as she failed to attend the medical appointments with Dr. Matos, did not submit the required medical results or

contacted Dr. Matos again. Therefore, plaintiff failed to place Lilly in a position to evaluate plaintiff's claim for benefits and to further submit the case to the Employee Benefits Committee in the United States for Extended disability benefits consideration.

Regarding plaintiff's claim for payment for short-term disability benefits under the "Pago Suplementario de la Compañía en Accidentes/Enfermedad Ocupacional" as stated in Lilly's Employee Manual, it is Lilly and the Plan's position that pursuant to the applicable policy, the Company has discretion in the granting of this type of benefit. To this effect, two (2) of the requirements that will be taken in consideration by Lilly for the granting of this benefit is that the Company agrees that the illness or accident is work related and agrees with the medical handling of the case. In this case, and pursuant to its discretion, Lilly decided to deny plaintiff the supplementary payment, inasmuch as Lilly had doubts that Cintrón's condition was work related, based on the following among others: 1) on or around June 1997, the severity of her condition and her medical history in conjunction with her work history did not seem to originate from the workplace; 2) on or around March 1997, Cintrón's job required her to work a couple of hours a day on the computer; 3) Cintrón's job required her to spend most of her time reading books in order to compare gaps in the pharmacopeia; 4) Cintrón's symptoms were not typical of computer related problems for the estimated time spent at the computer; 5) in June 1997, Lydianne Sécola performed an ergonomic study of Cintrón's work area which revealed that Cintrón had bad posture at her workstation; 6) Cintrón's condition did not improve with rest and physical therapies while away from work; 7) Cintrón's condition

seemed to be systemic in nature rather than work related; 8) Cintrón developed an alleged emotional condition while away from work.

Plaintiff further claims relief pursuant to section 502(c)(1)(B) of ERISA alleging that the Plan's administrator, fiduciary or trustee refused or failed to comply with plaintiff's requests for information to Lilly's Plan Administrator. This Honorable Court determined in its Opinion and Order issued December 15, 2000, that plaintiff had submitted a request for information about the Plan on May 19, 1998, within the meaning of Section 1132(c)(1)(B) of ERISA. Therefore, it is Lilly and the Plan's contention that prior to May 19, 1998, plaintiff had not made a request for information within the meaning of ERISA. Therefore, it is from that day forward, that plaintiff would be entitled to the remedies provided under this section of ERISA. This Honorable Court, however, and pursuant to the applicable case law, the imposition of the penalty and the amount (up to $110 per day) is discretionary with the courts, absent bad faith on the part of the plan administrator or actual harm to the participant or beneficiary. Rodríguez-Abreu v. Chase Manhattan Bank, N.A., 986 F.2d 580, 588-589 (1st Cir. 1993). In view of the foregoing, the appearing co-defendants contend that they have always acted in good faith never with negligence, malice or willfulness, and in compliance with all applicable laws and were neither arbitrary nor capricious, nor did they abuse whatever discretion they may have had. Therefore, this Honorable Court should exercise its discretion not to impose the penalties provided by ERISA Section 502(c)(1)(B).

On the other hand, co-plaintiff, Cintrón, is not entitled to recover the alleged loss of disability retirement pension, the alleged loss of savings, stock, and health insurance plans under COBRA, and/or does not qualify for receipt of these benefits. It is well settled that in essence, ERISA section 502(a)(1)(B), 29 U.S.C. §1132, provides for recovery of benefits due, enforcement of other rights under the terms of the plan, or clarification of rights to future benefits. Therefore, plaintiff's remedies would be limited to the recovery, upon prevailing in the present claim, of the long-term disability benefits.

With respect to co-plaintiff, Miguel A. García's supplemental claim for extra-contractual damages, it is Lilly and the Plan's position that extra-contractual damages are not recoverable under ERISA either for the employee in question or its family members. In the alternative, even if this Honorable Court were to grant supplemental jurisdiction under Article 1802 of the Puerto Rico Civil Code, 31 L.P.R.A. §5141, co-plaintiff Miguel A. García has failed to state a claim under said statute. Therefore, co-plaintiff, Miguel Garcia's claim for extra-contractual damages should be dismissed.

Defendants do not address plaintiffs' claim for punitive damages, inasmuch as said claim was dismissed by the Court in its Opinion and Order dated December 15, 2000.

V. — CONTESTED ISSUES OF LAW

A. Plaintiff's Contested Issues of Law:

The defendants make the followings statements in their legal theory with which plaintiffs do not agree, therefore there are contested:

1 "Plaintiff's first request for disability benefits was made to Mr. Ricardo Flores on May 19, 1998. Thereafter, plaintiff did not comply with the established proceedings, inasmuch as she failed to attend the medical appointments with Dr. Matos, did not submit the required medical results or contacted Dr. Matos again. Therefore, plaintiff failed to place Lilly in a position to evaluate plaintiff's claim for benefits and to further submit the case to the Employee Benefits Committee in the United States for extended disability benefits consideration."

2 "Regarding plaintiff's claim for payment for short-term disability benefits under the "Pago Suplementario de la Compañía en Accidentes/Enfermedad Ocupacional" as stated in Lilly's Employee Manual, it is Lilly and the Plan's position that pursuant to the applicable policy, the Company has discretion in the granting of this type of benefit. To this effect, two of the requirements that will be taken in consideration by Lilly for the granting of this benefit is that the Company agrees that the illness or accident is work related and agrees with the medical handling of the case. In this case, and pursuant to its discretion, Lilly decided to deny plaintiff the supplementary payment, inasmuch as Lilly had doubts that Cintrón's condition was work related, based on the following among others: 1) on or around June 1997, the severity of her condition and her medical history in conjunction with her work history did not seem to originate from the workplace; 2) on or around March 1997, Cintrón's job required her to work a couple of hours a day on the computer; 3) Cintrón's job required her to spend most of her time reading books in order to compare gaps in the pharmacopeia; 4) Cintrón's symptoms were not typical of computer related problems for the estimated time spent at

the computer; 5) in June 1997, Lydianne Sécola performed an ergonomic study of Cintrón's work area which revealed that Cintrón had bad posture at her workstation; 6) Cintrón's condition did not improve with rest and physical therapies while away from work; 7) Cintrón's condition seemed to be systemic in nature rather than work related; 8) Cintrón developed an alleged emotional condition while away from work."

3 "In view of the foregoing, the appearing co-defendants contend that they have always acted in good faith never with negligence, malice or willfulness, and in compliance with all applicable laws and were neither arbitrary nor capricious, nor did they abuse whatever discretion they may have had. Therefore, this Honorable Court should exercise its discretion not to impose the penalties provided by ERISA Section 502(c)(1)(B)."

4 "Under Article 1802 of the Puerto Rico Civil Code, 31 L.P.R.A. §5141, co-plaintiff Miguel A. García has failed to state a claim under said statute. Therefore, co-plaintiff, Miguel Garcia's claim for extra-contractual damages should be dismissed."

5 "On the other hand, co-plaintiff, Cintrón, is not entitled to recover the alleged loss of disability retirement pension, the alleged loss of savings, stock, and health insurance plans under COBRA, and/or does not qualify for receipt of these benefits. It is well settled that in essence, ERISA section 502(a)(1)(B), 29 U.S.C. §1132, provides for recovery of benefits due, enforcement of other rights under the terms of the plan, or clarification of rights to future benefits. Therefore, plaintiff's remedies would be limited to

the recovery, upon prevailing in the present claim, of the long-term disability benefits."

B. Defendants' Contested Issues of Law:

1. Whether plaintiff is entitled to Short Term Disability and Long Term Disability benefits and to the disability retirement pension, pursuant to Section 502(a)(1)(B) of ERISA.

2. Whether plaintiff is entitled to a civil action because the Lilly Plan Administrator allegedly refused to comply with her request for information and did not mail the material requested within thirty (30) days after such request, pursuant to Section 502 (c)(1)(B) of ERISA.

3. Whether plaintiffs are entitled to the supplemental claims filed under Article 1802 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, §§5141 and 5142.

VI. CLAIMS AND DEFENSES WAIVED

A. **Plaintiff:**

None.

B. **Defendant:**

No defenses raised by defendant are waived are abandoned.

VII. UNCONTESTED FACTS

A. Plaintiff:

1. Ms. Cintrón worked as an employee for Eli Lilly for approximately twenty (20) years.

2. Plaintiff Miguel A. García Méndez is the husband of Kenia M. Cintrón Parrilla, and together they form a legal conjugal partnership.

3. Eli Lilly Industries, Inc. Health, Welfare and Disability Plan, and/or Eli Lilly Puerto Rico Extended

Disability Plan (the Lilly Plan), is an employee benefit plan and/or employee welfare benefit plan, as those terms are defined in Section 3 (1) and (3) of ERISA, 29 U.S.C. sec. 1002 (1) and (3), thus subject to the provisions of ERISA, 29 U.S.C. §§1001 et seq.

4. Eli Lilly del Caribe, Inc. and/or Eli Lilly Industries, Inc., ("Lilly" or "Eli Lilly"), is a private corporation doing business in Puerto Rico, with its main business office located in Carolina, Puerto Rico.

5. On June 17, 1997, plaintiff Kenia Cintrón went to work and once there she spoke with Eli Lilly's Human Resources Director, Mr. Ricardo Flores, and she informed Mr. Ricardo Flores that she had visited a private neurologist, and that he diagnosed her "bilateral carpal tunnel syndrome" and "thoracic outlet syndrome".

6. On June 18, 1997, Ms. Cintrón went to her appointment with Lilly's in-house doctor, Dr. Felix Matos and hand delivered and notified Dr. Felix Matos with a copy of the written referral dated, June 17, 1997, signed by the neurologist, Dr. Tomás Hernández, in which he diagnosed her with the above mentioned medical conditions and that she must be referred to the State Insurance Fund.

7. On that same day, June 18, 1997, Dr. Felix Matos filled-out the forms and referred plaintiff, Kenia M. Cintrón, to the State Insurance Fund.

8. On June 18, 1997, Mr. Ricardo Flores and Mrs. Raquel Llivina, told Ms. Cintrón that she had to sign a Medical Records and Information Release Authorization document, in order to forward it to Medical Card System, Inc., because said company was going to assess her case so as to have her received temporary and/or short term

disability benefits. Ms. Cintrón complied with said request on June 19, 1997.

9. On June 19, 1997, Ms. Cintrón telephoned Mrs. Luz E. Soto, who at that time was plaintiff's immediate supervisor, and also Eli Lilly's Compliance Officer, and she told Mrs. Luz E. Soto that Dr. Félix Matos had referred her to the State Insurance Fund.

10. On or about June 25, 1997, Mrs. Raquel Llivina also told plaintiff Kenia Cintrón that Mrs. Lydia Sécola, an employee of Eli Lilly's Industrial Hygiene Department, and also a member of Lilly's Plan Evaluation Committee, was going to perform an assessment to Ms. Cintrón's work area at Eli Lilly.

11. On June 27, 1997, plaintiff Ms. Cintrón attended an appointment with Dr. Félix Matos, who told plaintiff to attend her workplace area assessment which was going to be performed later on that same day.

12. On July 2, 1997, Mrs. Raquel Llivina informed Ms. Cintrón that there were doubts as to whether plaintiff's medical conditions were work-related.

13. On July 17, 1997, Mrs. Cintrón attended another appointment with Dr. Felix Matos, and she gave Dr. Matos a copy of a Medical Certificate, dated July 16, 1997, signed by plaintiff's neurologist. Dr. Tomás Hernández, which diagnosed her with Bilateral Thoracic Outlet Syndrome, and also concluded that plaintiff's medical condition were work-related.

14. On August 4, 1997, Ms. Cintrón visited Dr. Félix Matos, and he referred her to see Dr. Marcos U. Ramos.

15. On August 15, 1997, Ms. Cintrón met with Mr. Ricardo Flores, Mrs. Raquel Llivina, and Dr. Félix Matos

16. On the meeting held on August 15, 1997, where Ms. Cintrón met with Mr. Ricardo Flores, Mrs. Raquel Llivina, and Dr. Félix Matos, they requested Ms. Cintrón to visit once again Dr. Félix Matos on August 21, 1997.

17. On August 21, 1997, Ms. Cintrón attended her appointment with Dr. Felix Matos, who told her that he had received the Medical Report from Dr. Marcos U. Ramos.

18. On August 28, 1997, Mrs. Raquel Llivina called plaintiff on the telephone.

19. On September 3, 1997, Ms. Cintrón spoke with Mr. Ricardo Flores, showing him Dr. Florencio Lao's medical report.

20. On September 4, 1997, Ms. Cintrón attended an appointment with Dr. Felix Matos, Eli Lilly's in-house physician. Ms. Cintrón gave him a copy of the medical report prepared and signed by Dr. Florencio Lao and he read it completely, and said he will discuss said report with the Internal Evaluation Committee.

21. September 4, 1997, Ms. Cintrón visited Mrs. Raquel Llivina's office and Mrs. Llivina told the plaintiff that she was going to once again assess plaintiff's medical case in conjunction with Eli Lilly's Internal Evaluation Committee (Medical Case Evaluation Committee), and that said Committee was composed of the following persons: Mr. Ricardo Flores, Human Resources Director; Mrs. Raquel Llivina, Human Resources Leader; Mrs. Luz E. Soto, Compliance Officer and plaintiff's immediate supervisor; Mrs. Evelyn Rodríguez, Quality Assurance Director; Dr. Felix Matos, in-house doctor; and Mrs. Lydianne Sécola, from the Industrial Hygiene Office.

22. On October 17, 1997, Ms. Cintrón attended an appointment with Dr. Felix Matos and she hand delivered to Dr. Matos, a copy of new medical evidence which confirmed her condition of Thoracic Outlet Syndrome.

23. On that same day, October 17, 1997, Ms. Cintrón visited Mrs. Raquel Llivina's office at Eli Lilly, and once there Mrs. Llivina hand-delivered to Ms. Cintrón a letter dated October 13, 1997, from Eli Lilly, which stated that they had granted to the plaintiff a family sick leave of absence from work (Family and Medical Leave) without pay which the plaintiff had not requested.

24. On or about November 24, 1997, Ms. Cintrón's lawyer before the State Insurance Fund, Mr. Juan A. Hernández Rivera, sent a certified letter on Ms. Cintrón's behalf to Mr. Ricardo Flores, Lilly Human Resources Director, which informed him that the plaintiff was entitled, under the employment terms of Eli Lilly, to received a supplemental payment for disability during a one (1) year period, because the plaintiff's sickness and conditions were work-related.

25. On or about December 15, 1997, Lilly's legal counsel, Mr. Carl Schuster, sent a letter to the plaintiff's lawyer at that time, Mr. Juan A. Hernández Rivera, informing him that Eli Lilly had evaluated her claim for disability benefits under Lilly's applicable norms and policies, and that it had concluded that she was no entitled to receive supplemental payments for occupational sickness, but the aforementioned letter did not state nor explain the reasons to support said adverse conclusion and decision.

26. On January 9, 1998, plaintiff's lawyer at that time, Mr. Juan A. Hernández Rivera, sent a letter to Eli Lilly's lawyer, Mr. Carl Schuster, requesting him to inform and explain the reasons for denying Ms. Cintrón's request for supplemental payments for occupational sickness; and also informed Eli Lilly's lawyer, that it attaching to said letter a copy of a certification and documents issued by the State Insurance Fund, dated January 8, 1998, in which the State Insurance Fund certified that Ms. Cintrón had undergone, and was still receiving, medical treatment at rest since June 18, 1997, for medical conditions related to plaintiff's job under the following diagnosis: "lumbo sacral strain" and "bilateral strain". Said letter also informed Eli Lilly's lawyer, through the documents attached therein issued by the PR State Insurance Fund, that Ms. Cintrón was undergoing treatment at rest with the State Insurance Fund for an emotional condition, about which final decision was still pending.

27. On February 3, 1998, Ms. Cintrón sent a letter via fax to Mr. Ricardo Flores and to Mrs. Raquel Llivina.

28. Also on February 3, 1998, Ms. Cintrón sent a letter by fax to Dr. Félix Matos, Eli Lilly in house doctor, informing him that his office had canceled her medical appointments with him on two (2) occasions; and the plaintiff also sent Dr. Matos, by fax, a copy of various medical documents which contained information regarding plaintiff medical case at the PR State Insurance Fund.

29. On February 16, 1998, Ms. Cintrón sent a letter by fax to Mr. Ricardo Flores and to Mrs. Raquel Llivina, requesting them once again to inform her in writing of Eli

Lilly's final decision regarding her medical case and benefits.

30. On February 26, 1998, Ms. Cintrón sent a letter by fax to Dr. Felix Matos, informing him the reasons for not attending to the appointments of February 25 and 26, 1998, and suggesting new dates for further appointments.

31. On May 19, 1998, during the morning, Ms. Cintrón visited Mr. Ricardo Flores, Eli Lilly's Human Resources Director, and told him that based on her medical illness and conditions, she was not able to do any type of work, and that therefore the plaintiff requested Mr. Ricardo Flores a disability pension. Ms. Cintrón requested Mr. Flores to provide her with the applicable forms where she could file with Eli Lilly, a formal request or claim for a disability pension.

32. Mr. Ricardo Flores replied Ms. Cintrón, during said conversation on May 19, 1998, that what the plaintiff was requesting was requesting didn't exist in Eli Lilly, that what they had was an extended disability benefits pension, which cannot be requested by the employee but, rather that said pension benefit could only be acquired by recommendation and approval of Eli Lilly's in-house doctor, Dr. Felix Matos. Mr. Ricardo Flores also informed Ms. Cintrón that in order to find out whether or not she qualified for an extended disability benefit, she had to contact Mrs. Raquel Llivina, Eli Lilly's Human Resources Leader, and request her to coordinate a meeting between the three of them: Mrs. Llivina, Dr. Felix Matos and Ms. Cintrón.

33. Ms. Cintrón replied to Mr. Flores during the above mentioned conversation on May 19, 1998, that she had an appointment on that same day with Dr. Félix Matos, Eli

Lilly's in-house doctor; and then Mr. Flores informed the plaintiff that the meeting he had just suggested was not necessary.

34. On that same day, May 19, 1998, Ms. Cintrón attended her appointment with Dr. Félix Matos, at his office in Eli Lilly

35. On May 19, 1998, Ms. Cintrón hand-delivered to Dr. Félix Matos a copy of the last medical findings and evaluations in her possession up to that moment, which included a neurological Questionnaire filled-out by her Neurologist, Dr. Tomás Hernández, in which he concluded that Ms. Cintrón's prognosis was very poor and that she was totally disabled to perform any gainful activity.

36. On that same day, May 19, 1998, Ms. Cintrón prepared, signed, and sent a letter by fax, dated May 19, 1998, to Mr. Ricardo Flores in which she detailed the conversation she had with him and with Dr. Félix Matos on that day of May 19, 1998.

37. On or about December 23, 1998, Ms. Cintrón received a letter dated December 23, 1998, signed by the newly appointed Eli Lilly's Human Resources Director, Mrs. Ileana Rivera, in which she informed Ms. Cintrón that Eli Lilly had decided to terminate her employment at Lilly effective on December 22, 1998.

38. Much after February 2, 1999, Mrs. Cintrón received a letter dated February 2, 1999, signed by Mrs. Ileana Rivera, Eli Lilly's Human Resources Director, in which it notified the plaintiff that she did not qualify to received the extended disability benefits under the Lilly Plan, because Eli Lilly allegedly had requested to the plaintiff some medical information, and allegedly the plaintiff had failed

to provide it; because the plaintiff allegedly failed to communicate with Dr. Félix Matos; and because she, allegedly failed to return to Lilly's Industrial Medicine Department.

39. Said letter dated February 2, 1999, also informed Ms. Cintrón that regarding her claim made on January 11, 1999, for extended disability benefits under the Lilly Plan, she did not qualify because said claim made on January 11, 1999, was made after she was terminated from her job.

40. That while being employed at Lilly, Ms. Cintrón received a copy of the Lilly Employees Manual dated 1994, which contains a summary plan description (SPD) providing certain information regarding the review (appeal) procedure to be followed in order to file an appeal from the denial of extended disability benefits under the Lilly Plan.

41. On or about July 15, 1999 the Social Security Administration approved a disability pension benefits to Mrs. Cintrón.

B. Defendant:

1. On September 26, 1997, Cintrón was hired at Lilly as Laboratory Technician.

2. On February 1, 1978, Cintrón was transferred to the position of Chemist.

3. On March 1, 1980, Cintrón was transferred to the position of Sr. Laboratory Supervisor.

4. On September 1, 1986, Cintrón was transferred to the position of Sr. Quality Control Representative.

5. On August 1, 1991, Cintrón was transferred to the position of Supervisor, Parenterals Operation Department.

6. On January 17, 1994 was transferred to the position of Process Team Leader.

7. On June 18, 1997, Dr. Felix Matos referred Cintrón to the State Insurance Fund.

8. On or around November 25, 1997, co-plaintiff, Kenia Cintrón requested Social Security Benefits.

9. On August 25 1998, plaintiff is discharged with disability from the State Insurance Fund regarding her physical condition.

10. On December 23, 1998, plaintiff was terminated from employment by letter sent by Ileana Rivera.

11. On January 11, 1999, a meeting was held between Ileana Rivera, Evelyn Rodríguez, Cintrón and Plaintiff's to discuss Cintrón employment termination.

12. On February 3, 1999, plaintiff is discharged with disability from the State Insurance Fund regarding her emotional condition.

13. On July 15, 1999, Cintrón was granted Social Security benefits retroactively to December 1997.

VIII. CONTESTED FACTS

A. Plaintiff:

The defendants make the following statements of fact with which plaintiffs do not agree, therefore there are controverted:

1. "Contrary to plaintiff's allegations, this project, however, did not require plaintiff to spend six to seven consecutive hours working with a computer but much less time."

2. "While still out of work and receiving treatment at the SIF, plaintiff visited Dr. Ramos on various occasions,

but did not mention her intension not to return to work or the fact that she was disabled to perform her job. Therefore, Lilly was under the impression that plaintiff would return to work upon the termination of her short-term disability benefits."

3. "On May 19, 1998, plaintiff visited Dr. Felix Matos and he gave her a follow up appointment in two (2) weeks. Plaintiff did not come to this or any other appointment, called to excuse herself or requested another appointment."

B. Defendant:

Defendant reserve the right to amend the proposed Pretrial Order and submit their statement of contested facts, once they agree upon the statement of uncontested facts.

IX. DOCUMENTARY EVIDENCE

A. Plaintiff's Documentary Evidence:

1. 6/19/97: Fax Transmission Report - Document sent to Lilly's Doctor.

2. 1 (a). 6/18/97: Corporation of the State Insurance Fund ("CSIF") - Administrator decision on Medical Treatment.

3. 1 (b). 6/18/97: Authorization to Supply Medical Information.

4. 1 (c). 6/18/97: CSIF's Application for Medical Document to Medical Institution.

5. 6/25/97: Medical Card System's disability certifications until 7/15/97, until 8/20/97, and until 930/97.

6. 6/27/97: Lydianne Secola's Summary Evaluation of Kenia Cintrón's Duties.

7. 10/13/97: Raquel Llivina's letter to Kenia: Family-Medical Leave of Absence.

8. 10/17/97: Letter from Kenia to Ricardo Flores: protesting Family - Medical Leave.

9. 2/3/98: Letter from Kenia to Ricardo Flores: Requesting information about her case

10. 2/3/98: Letter from Kenia to Dr. Matos. 4 documents attached.

11. 2/16/98: Fax letter from Kenia to Ricardo Flores. 2 pages.

12. 2/26/98: Fax from Kenia to Dr. Matos. 2 pages.

13. 5/23/98: Fax transmittal sheet; letter of 5/19/98 from Kenia to Ricardo Flores; Transaction report; CFSE Neurology evaluation from Dra. Hernández (12 pages).

14. 12/23/98: Letter from Ileana Rivera to Kenia: termination.

15. 1/11/99: Letter from Kenia to Ileana Rivera.

16. 2/2/99: Letter from Ileana Rivera to Kenia.

17. 6/10/99: Letter from Ileana Rivera to Kenia.

18. 10/20/93: Allergic to Lorabid. 12 pages

19. 6/18/97: Dr. Matos's handwritten notes until 8/21/97. 3 pages.

20. 11/24/97: Letter from Lcdo. Juan Hernández to Ricardo Flores.

21. 12/15/97: Letter from Carl Schuster to Lcdo. Juan Hernández Rivera.

22. 1/9/98: Letter from Lcdo. Juan Hernández Rivera to Carl Schuster. 2 pages.

23. 6/2/97: Medical Report from Lydia Lugo.

24. Medical Record from Tomás Hernández which includes Reports from Florencio Lao and from Dr. José Bisbal.

25. 3/13/99: Medical Certificate from Dr. Hector Torres.

26. 8/24/98: Psychiatrist Evaluation from Dr. Trorres. 4 pages.

27. 5/20/98: Report from Dr. Hector Torres to Disability Determination Program. 4 pages.

28. 9/8/97: Ergonomic Evaluation Sandra Ramírez Bey of CSIF.

29. 12/4/97: Receipt for Claim from Social Security.

30. 7/15/99: Favorable Decision from S.S.A. 15 pages.

31. 1994 Manual del Empleado (Associates Manual).

32. Extended Disability Plan Regulation.

33. 5/27/98: Letter from Eli Lilly's attorneys to Lcdo. Jesús Hernández Sánchez.

34. Every document requested in our March 23, 2001 First Request for Production of Documents, and which have not been produced yet, including but not limited to: Plaintiff's personnel file. Plaintiff's medical file with Lilly. The Lilly Employee Welfare Plan.

35. Medical Report from Dr. Florencio Lao.

36. Medical Report from José Eddie Bisbal.

B. <u>Defendants' Documentary Evidence</u>:

1. Lilly's Employee Manual.
2. Plaintiff's personnel file.
3. Plaintiff's medical file with Lilly.
4. The Eli Lilly Puerto Rico Extended Disability Plan.
5. The Lilly Employee Welfare Plan.

6. Letter dated December 15, 1997, from Carl Schuster, Esq. to Juan A. Hernández Rivera, Esq.

7. Letter dated December 23 1998, from Ileana Rivera to Kenia Cintrón.

8. Letter dated February 2, 1999, from Ileana Rivera to Kenia Cintrón

9. Medical Evaluation Report by Dr. Marcos U. Ramos dated August 7, 1997.

10. Ergonomic Evaluation Report by Lydianne Sécola dated August 21, 1997.

Defendants reserve the right to supplement its documentary evidence to include additional matters revealed in further discovery. Defendants' exhibits have not necessarily been listed in order in which they will be used at trial.

X. DEPOSITIONS

A. Plaintiff's Depositions:

1. Deposition of Kenia Cintrón with its exhibits.

2. Deposition of Dr. Tomás Hernández with its exhibits.

3. Deposition of Dr. Florencio Lao with its exhibits.

4. Deposition of Deposition of José Eddie Bisbal with its exhibits.

5. The deposition of Miguel A. García Méndez has not been taken yet.

B. Defendant's Depositions:

1. Kenia Cintrón Parrilla

2. Dr. Tomás Hernández

3. Dr. Florencio Lao

4. Dr. José Eddie Bisbal

XI. DISCOVERY

A. Plaintiff:

Plaintiff will determine if it needs further discovery once it received all the documents requested.

B. Defendants:

Defendants reserve the right to conduct additional discovery procedures for trial purposes, if necessary. Defendants will be taking the deposition of co-plaintiff, Miguel García.

XII. WITNESSES

A. Witnesses Plaintiff intends to call at trial:

1. Kenia Cintrón, plaintiff: will testify about all of the allegations in the case.

2. Dr. Florencio Lao, Physiatrist: will testify about the medical studies he performed on Ms. Cintrón and its results which are contained in the medical record and his deposition.

3. Dr. José Eddie Bisbal, Physiatrist: will testify about the medical studies he performed on Ms. Cintrón and its results which are contained in the medical record and his deposition.

4. Miguel A. García Méndez, plaintiff: will testify about his emotional distress and anguish damages caused by the defendants by the way they acted against his wife, Ms. Kenia Cintrón.

B. Witnesses Defendants intends to call at trial:

1. Ms. Ileana Rivera – In general terms, Ms. Rivera will testify about several areas including, but not limited to the following: the Company's policies and procedures,

including the Extended Disability Plan, custodian of plaintiff's personnel file, her participation in plaintiff's dismissal, various meetings she had with plaintiff to discuss plaintiff's concerns; her knowledge regarding the fact alleged in the complaint and other related matters without limitation.

2. Mr. Ricardo Flores – In general terms, Mr. Flores will testify about several areas including, but not limited to the following: meetings he had with plaintiff regarding her alleged medical condition; plaintiff's request for disability benefits; his knowledge regard the facts alleged in the complaint and any other relevant areas and other related matters without limitation.

3. Dr. Felix Matos – In general terms, Mr. Matos will testify as to plaintiff's visits to Lilly's Health Services Department; custodian of plaintiff's medical file with the Company; the process to request Lilly's Extended Disability Benefits; that plaintiff did not comply with Lilly's process to request Extended Disability Benefits; the medical information that had been made available to the Company; various meetings in which he participated regarding plaintiff, his knowledge regarding the facts alleged in the complaint and other related matters without limitation.

4. Ms. Raquel Llivina – In general terms, Ms Llivina, will testify about several areas including but not limited to the following: several meetings she had with plaintiff regarding her alleged medical condition and to discuss the benefits plaintiff would be entitled to; the reasons for the denial of plaintiff's short-term disability benefits pursuant to Company policy; her knowledge regarding the facts

alleged in the complaint and other related matters without limitation.

5. Ms. Lydianne Sécola – In general terms, Ms. Sécola will testify about several areas including but not limited to the following: the ergonomic evaluation conducted in plaintiff's work area and the recommendations provided in view thereof; her knowledge regarding the facts alleged in the complaint and other related matters without limitation.

6. Ms. Ada Bermúdez – In general terms. Ms. Bermudez will testify about several areas including but not limited to the following: that she never told plaintiff not to communicate with Lilly, since she had sued the Company; her knowledge regarding the facts alleged in the complaint and other related matters without limitation.

7. Ms. Luz E. Soto – In general terms, Ms Soto, will testify about plaintiff's duties and the time she spent working with the computer as part of the project plaintiff was assigned to on March 1997; her knowledge regarding the facts alleged in the complaint and other related matters without limitation.

Defendants reserve the right to supplement its witness list pursuant to various pending discovery matters and to call at trial as its witnesses, for any purpose provided by the Federal Rules of Civil Procedure or the Federal Rules of Evidence any of plaintiffs' witnesses.

XIII. EXPERT WITNESSES

A. <u>Expert witnesses plaintiff intends to call at trial</u>:

Dr. Tomás Hernández, neurologist.

B. <u>Expert witnesses defendants intends to call at trial</u>:

None at this time. Nevertheless, defendants reserve the right to call an expert witness in the event the plaintiff is allowed to call one at trial.

XIV. STIPULATION OR STATEMENT SETTING FORTH THE QUALIFICATIONS OF THE EXPERT WITNESS

A. Plaintiff:

Plaintiff expert witness is Dr. Tomás Hernández, Neurologist, and his Curriculum Vitae is attached.

B. Defendant:

None at this time.

XV. TECHNICAL WORDS

A. Plaintiff:

1. Estudios Electrodiagnósticos.
2. Electromiografía (EMG) = Estudio de Agujas: Electromyographic test.
3. Estudio de velocidad de Conducción (NCV) = Nerve Conduction Velocities.
4. Tinel test.
5. Phaln test.
6. Adson test.
7. Síndrome de trauma Acumulativo.
8. Doppler test.

B. Defendant:

None identified at this time.

XVI. ITEMIZED STATEMENT OF SPECIAL DAMAGES

A. Plaintiff:

1. Short Term Disability benefits: $71,872.55.

2. Long term disability benefits: $2.018.10 per month since November of 1997.

3. Failure to provide requested information: $100.00 per month since October 17, 1997.

4. Failure to provide requested information: $100.00 per month since January 8, 1998.

5. Failure to provide requested information: $100.00 per month since May 19, 1998.

B. Defendant:

None.

XVII. INTERPRETERS

A. Plaintiff's need for an Interpreter:

1. Kenia Cintrón
2. Miguel A. García Méndez
3. Dr. Tomás Hernández
4. Dr. Florencio Lao
5. Dr. José Bisbal

B. Defendant's need for an Interpreter:

Defendants will require the services of an interpreter for witnesses Lydianne Sécola, Ada Bermúdez and Luz E. Soto.

XVIII. PENDING MOTIONS

A. Plaintiff:

Plaintiffs are waiting for defendants to produce the documents requested in the first Request for Production of Documents of March 23, 2001. If those documents are not produced within two (2) weeks an order will be requested from the Court.

B. Defendants:

There are no motions pending before this Court.

XIX. OTHER MATTERS

1. There is reserved to each of the parties the right to further supplement the list of witnesses and exhibits upon application to the Court, and for good cause shown.

2. There is reserved to each parties the right to call such rebuttal witnesses as may be necessary without prior notice thereof to the other party.

3. The probable length of trail is two (2) days.

4. The parties reserve the right whether or not to use any of the witnesses or exhibit herein announced and no adverse inference will be drawn from the failure of the parties to present at trial any witnesses or exhibit announced herein.

5. The parties reserve the right to use the other parties' answers to interrogatories and request for production of documents for any purpose allowed by the Federal Rules of Civil Procedures and the Federal Rules of Evidence.

6. The Pretrial Order may be modified at the trial of the action, or prior thereto, to prevent manifest injustice. Such modification may be made either on application of counsel for the parties or on motion of the Court.

7. There is reserved to counsel for respective parties the right to submit supplemental requests for instructions during the course of the trial or at the conclusion of the evidence on matters that cannot reasonably be anticipated.

In San Juan, Puerto Rico this 25th day of September 2001.

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1519 Ponce de León Avenue
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Tel. 722-5814/Fax 725-1112

SCHUSTER USERA
AGUILO & SANTIAGO
PO Box 363128
San Juan, PR 00936-3128
Tel. (787) 765-4646
Fax (787) 765-4611

By: /s/ Guillermo Macari
GUILLERMO MACARI
USDC-PR 206308

/s/ Carl Schuster by:LVR
CARL SCHUSTER
USCD-PR 201802

/s/ Jesús Hernández Sánchez
JESÚS HERNÁNDEZ
SÁNCHEZ
USDC-PR 109208

/s/ Lizette Vélez Rivé
LIZETTE VÉLEZ RIVÉ
USCD-PR 209002

APPENDIX M

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MINUTES OF PROCEEDING

HONORABLE ROBERT J. WARD

DATE: DECEMBER 19, 2001
CIV.: 99-1229 (JAF)

CINTRON,	Attorneys
Plaintiff(s),	Jesus Hernandez
	Guillermo Macari
v.	
ELI LILL Y INDUSTRIES,	Carl Schuster
Defendant(s).	Lizette Velez

Settlement conference held. Settlement appears to be premature at this time. The parties will continue negotiations and report to RJW by January 18, 2002.

/s/ Jose Antonio Gonzalez, jr
Jose Antonio Gonzalez, jr.
RELIEF COURTROOM
DEPUTY
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF N.Y.

APPENDIX N

Exhibit 2

SCHUSTER USERA & AGUILO LLP
Counsellors at Law
PO Box 363128, San Juan, Puerto Rico 00936-3128
CARL SCHUSTER ELECTRONIC MAIL
DIRECT DIAL (787) 765-0055 CSCHUSTER@SUAS.NET

January 24, 2002

BY FAX AND REGULAR MAIL
Jesús Hernández Sánchez, Esq.
Hernández Sánchez Law Firm
First Bank Building
Suite 806-810
1519 Ponce de León Ave.
San Juan. Puerto Rico 00909-1791

Re: Kenia Cintrón v. Lilly Del Caribe, Inc.
Civil Núm. FDP 98-0262 (403)

Dear brother counsel:

After consulting with our client regarding a potential settlement in the referenced case pursuant to the recent conference held with judge Ward, we have been authorized to convey plaintiff a lump-sum settlement offer in .the amount of $40,000.00, including attorney's fees. The possibility of submitting plaintiff to the long-term disability process is not feasible at this time.

Awaiting your prompt response I remain,

Truly Yours,
/s/ Carl Schuster
Carl Schuster

APPENDIX P

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRÓN PARRILLA, ET AL.
VS. CIVIL NO. 99-1229 (JAF)
ELI LILLY INDUSTRIES, INC., ET AL.

DESCRIPTION OF MOTION

DATE FILED: 6/3/2002 DOCKET: 63
TITLE: INFORMATIVE MOTION
[X] Plaintiff(s) []Defendant(s)

O-R-D-E-R

__ GRANTED
__ DENIED
__ MOOT
X NOTED

OTHER: HOWEVER, COUNSEL ARE REMINDED THAT OUR ORDER ENTERED MAY 7, 2002, DOCKET DOCUMENT NO. 61, REMAINS IN FULL FORCE AND EFFECT UNTIL AND/OR DISMISSAL DOCUMENTS ARE FILED.

6/05/2002
Date

/s/ Jose Antonio Fuste
JOSE ANTONIO FUSTE
U. S. DISTRICT JUDGE

APPENDIX R

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Kenia Cintrón Parrilla
VS. CIVIL NO. 99-1229 (JAF)
Eli Lilly etc

DESCRIPTION OF MOTION

DATE FILED:	DOCKET:	TITLE:
[] Plffs.	[] Defts.	

O-R-D-E-R

Parties appeared today. The case is not settled as originally proposed. Parties granted until Aug 14 to file a signed settlement agreement. Advised the case shall be tried starting Aug 15, 02, 930AM.

7 31/02
Date

/s/ Jose A. Fuste
JOSE A. FUSTE
U. S. DISTRICT JUDGE

APPENDIX S

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA, et al.,
Plaintiffs,

v. Civil No. 99-1229 (JAF)

ELI LILLY INDUSTRIES, INC.;
ELI LILLY DEL CARIBE, INC.;
AND/OR LILLY DEL CARIBE, INC.;
ELI LILLY INDUSTRIES HEALTH
WELFARE AND DISABILITY PLAN
AND/OR ELI LILLY PUERTO RICO
EXTENDED DISABILITY PLAN;
COMPANY X; COMPANY Y;
COMPANY A; COMPANY B;
COMPANY C; COMPANY D,
Defendants.

JOINT MOTION REQUESTING PARTIAL VOLUNTARY DISMISSAL WITH PREJUDICE AND SUBMITTING AGREEMENT UNDER SEAL

TO THE HONORABLE COURT:

COME NOW the captioned parties ("the parties"), through their undersigned attorneys and very respectfully state and pray as follows:

1. The appearing parties have reached an agreement resolving all present or potential claims presented by Plaintiff in the captioned case, with the exception of

Plaintiffs' Long-Term Disability claim pursuant to Section 502(a) of ERISA.

2. The appearing parties also agreed to keep all terms and conditions in relation to the Agreement as confidential. The parties, however, submit herein copy of the Agreement under seal.

3. Therefore, the parties jointly request the voluntary dismissal **with prejudice** of any and all claims presented by Plaintiff against Defendants, with the exception of Plaintiffs' Long-Term Disability claim pursuant to Section 502(a) of ERISA.

4. With respect to the Long-Term Disability claim the parties have agreed that following the decision of the Employee Benefits Committee and Cintrón-Parrilla's receipt of notice of that decision, Cintrón-Parrilla within thirty (30) days must either submit the controversy to the Court in the instant case for the exclusive and sole purpose of judicial review under Section 502(a) of ERISA of the Employee Benefits Committee's decision applying the arbitrary and capricious standard of review provided by ERISA or file a voluntary dismissal with prejudice of the Long-Term Disability claim pursuant to Section 502(a) of ERISA, pursuant to paragraph 9 of the Agreement.

WHEREFORE, in view of the foregoing, the parties respectfully request that the Honorable Court dismiss with prejudice any and all claims against defendants, with the exception of Plaintiffs' Long-Term Disability claim pursuant to Section 502(a) of ERISA and enter judgment accordingly.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of August, 2002.

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Fax 725-1112

/s/ Gullermo Macari
GUILLERMO MACARI
USDC-PR 206308

by:/s/ Jesús Hernández Sánchez
JESÚS HERNÁNDEZ
SÁNCHEZ
USDC-PR 109208

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San Juan, PR 00936-3128
Tel. (787) 765-4646
Fax (787) 765-4611

/s/ Carl Schuster
CARL SCHUSTER
USCD-PR 201802

/s/Lizette Vélez Rivé
LIZETTE VÉLEZ RIVÉ
USCD-PR 209002

APPENDIX T

IN THE UNITED STATES DISRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRÓN PARRILLA
AND MIGUEL A. GARCÍA MÉNDEZ,
BY THEMSELF
PLAINTIFFS Civil Case No. 99-1229 (JAF)
VS.
JESÚS HERNÁNDEZ SÁNCHEZ
GUILLERMO MACARI
DEFENDANTS

MOTION IMPLORING URGENT HELP FROM THE HONORABLE COURT

TO THE HONORABLE COURT:

Comes now the plaintiffs mentioned in the caption of this motion, Kenia M. Cintrón Parrilla and Miguel A Garcia Mendez, by themselves, respectfully state, allege and plead the intervention of this Honorable Court to intercede for the plaintiffs as follows:

1- In Civil case no. 99-1229 (JAF), Kenia M. Cintrón Parrilla, ET Al, vs. Eli Lilly del Caribe, Inc., ET Al, exist a confidential agreement signed by the parties.

2- The defendants, Jesús Hernandez Sanchez and Guillermo Macari, are the legal representatives of the plaintiffs in Civil case no. 99-1229 (JAF).

3- According to plaintiffs' better understanding, the defendants have been denying the plaintiffs the legal representation that they deserve in the mentioned civil case.

4- Furthermore, the defendants have been deceiving the plaintiffs regarding the agreements signed by the parties.

5- The defendants have refused to file a motion to denounce the breaches to the agreement, failure to comply and/or false statements done by the Lilly del Caribe, Inc. related to mentioned civil case, denying the plaintiffs the opportunity to obtain from the Honorable Court the legal resources that correspond.

6- The defendants have also refused to file a motion to denounce the modifications, changes and/or alterations to the agreement, done by Lilly del Caribe, Inc. denying to the plaintiffs the opportunity to obtain from the Honorable Court the legal resources that correspond.

7- The defendants have been insisting the plaintiffs to accept agreements other than the ones stipulated and signed the parties in the agreement, and to accept false statements, which would favor Lilly del Caribe and would harm the plaintiffs.

8- The defendants have refused to file a motion for the rejection, annulment or diminishing of the agreement signed by the parties, as per the above exposed, not allowing this Honorable Court to decide the corresponding legal resources that may apply.

9- The defendants have been trying to force the plaintiffs to accept the breaches, modifications and/or alterations to the agreement, including the false statements, done by Lilly del Caribe, as acceptable.

10- Since this agreement signed by the parties is a confidential one, the plaintiffs cannot give more details of it at this moment.

11- The plaintiffs have paid to their legal representatives a greater amount of money than the stipulated on the decree, as per the defendants' request.

Wherefore, the plaintiffs in this action respectfully beg to this Honorable Court for its immediate action, enter judgment in our favor ordering the defendants to:

A- Fulfill the plaintiffs' legal representation requirements that the ministerial duties require from the defendants.

B- Award the plaintiffs with any legal equitable relief that this Honorable Court may deem proper, including any award of pre-judgment interest that may apply.

I hereby certify that a true and exact copy of this motion has been sent by certified mail number: 7001 1940 0005 5292 2014 to defendants, Jesus Hernandez Sanchez and Guillermo Macari, Hernandez Sanchez Law Firm, First Bank Building, Stop 23, Suite 806-810, 1519 Ponce de León Avenue, San Juan, Puerto Rico 00909

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 1st day of April, 2003.

/s/ Miguel A. García Méndez /s/Kenia M. Cintrón

Miguel A. García Méndez and Kenia M. Cintrón Parrilla

Social Security Numbers: 583-80-1113 / 584-66-4691

PO Box 232

Naguabo, PR 00718-0232

APPENDIX V

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA, et al.,
Plaintiffs,
v. CIVIL NO. 99-1229 (JAF)
ELI LILLY INDUSTRIES, INC.;
ELI LILLY DEL CARIBE, INC.;
AND/OR LILLY DEL CARIBE, INC.;
ELI LILLYINDUSTRIES HEALTH
WELFARE AND DISABILITY PLAN
AND/OR ELI LILLY PUERTO RICO
EXTENDED DISABILITY PLAN;
COMPANY X; COMPANY Y;
COMPANY A; COMPANY B;
COMPANY C; COMPANY D,
Defendants.

MOTION REQUESTING URGENT HEARING AND TO WITHDRAW AS ATTORNEYS OF RECORD

TO THE HONORABLE COURT:

Come now the undersigned attorneys and very respectfully state and pray:

1. The undersigned .attorneys have received a copy of a motion signed by plaintiffs pro se, and titled Motion Imploring Urgent Help from the Honorable Court.

2. In said motion plaintiffs make some accusations against the undersigned attorneys which are not correct and

to that effect we respectfully request a hearing at the earliest possible time so we can set the record straight, and to be allowed to withdraw as attorneys of record.

3. Plaintiffs signed, after much deliberation and consultation with the undersigned attorneys, a Confidential Settlement where even Hon. Judge Fuste helped the parties to reach the agreement.

4. Mrs. Cintrón wanted to back-track and impunge the agreement and request from the undersigned attorneys to file a motion requesting the annulment of the same. We refused and informed her that so far, there is no legal or factual reason to request such annulment. She said she was going to look for legal advise somewhere else. Instead she filed the motion described above.

5. Mrs. Cintrón and her husband have paid attorney's fees according to the contract signed by them with our law firm but she is not willing to pay the expenses incurred in the litigation as she is supposed to do, as per such contract.

6. Paragraphs 4 and 5 above are the crux of the problem.

WHEREFORE, it is respectfully requested from this Honorable Court to set plaintiffs' motion for a special hearing and, after the same, grant the withdrawal of the undersigned as attorneys for plaintiffs.

CERTIFY: That on this same date a true copy of this motion is being mailed to Mrs. Kenia M. Cintrón and her husband Miguel A. Garcia Mendez to their address of record, P.O. Box 232, Naguabo, PROO718-0232.

In San Juan, Puerto Rico this April 16, 2003.

HERNANDEZ SANCHEZ LAW FIRM
1519 PONCE DE LEON AVE.
FIRST BANK BLDG. SUITE, 806
SANTURCE, PR 00909-1791
TELS.722-5814/5813-FAX.725-1112

/s/ Jesús Hernández Sánchez
BY: JESÚS HERNÁNDEZ SÁNCHEZ
#109208

/s/ Guillermo Macari
BY: GUILLERMO MACARI
#206308

APPENDIX W

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA, ET AL;
PLAINTIFFS
V. CIVIL NO.99-1229 (JAF)
LILL Y DEL CARIBE, INC.; ET AL,
DEFENDANTS

MOTION REQUESTING URGENT HEARING

TO THE HONORABLE COURT:

Come now the plaintiffs, Kenia M. Cintrón Parrilla and Miguel A. García Méndez, by themselves, respectfully state, allege and plead the intervention of this Honorable Court to intercede for the plaintiffs as follows:

1- The plaintiffs received copy of the motion filed by our attorneys titled MOTION REQUESTING URGENT HEARING AND WITHDRAW AS ATTORNEYS OF RECORD.

2- In said motion, paragraphs 4, 5 and 6, our attorneys make accusations and allegations against tile plaintiffs that are not correct.

3- Based on the fact that the agreement is a Confidential Settlement and that the plaintiffs already have legal representation, is from the knowledge of our attorneys that the plaintiffs cannot divulge any information from the agreement and that is almost impossible to obtain any help from somewhere else other than this Honorable Court.

4- With the knowledge that the plaintiffs have those limitations, our attorneys, Jesus Hernandez Sanchez and

Guillermo Macari, refuse to report any breaches to the agreement done by the defendants, Lilly del Caribe, Inc., because the plaintiffs have already paid to the attorneys more than the amount agreed; and, as our attorneys have said, they are not going to spend more time and effort on this case.

5- Now, that the plaintiffs have overpaid to our attorneys, they request the withdrawal as attorneys of plaintiffs, in such manner that they can be released from their responsibilities with the plaintiffs, adversely affecting us.

WHEREFORE, the plaintiffs very respectfully beg to this Honorable Court to set a hearing to enter judgment in favor of the plaintiffs as per our requests:

A- To order the attorneys to fulfill the plaintiffs' requirements, comply with their responsibilities and ministerial duties in favor of the plaintiffs.

B- Award the undersigned plaintiffs with any legal equitable relief that this Honorable Court may deem proper, including any award of pre-judgment interest that may apply.

C- Based on the fact that the hearing will be conducted in English, the undersigned plaintiffs very respectfully request from this Honorable Court the assistance of a translator to help us with the process.

I hereby, certify that a true and exact copy of this motion is being sent by certified mail number: 7002 0860 0008 6598 1651, to the attorneys, Jesus Hernandez Sanchez and Guillermo Macari, Hernández Sánchez Law Firm, 1519 Ponce de León Avenue, First Bank Building, Suite 806; Santurce, Puerto-Rico 00909-1791.

RESPECTFULLY SUBMITTED
In San Juan, Puerto Rico, this April 25, 2003.

/s/ Miguel A. García Méndez /s/Kenia M. Cintrón
Miguel A. García Méndez and Kenia M. Cintrón Parrilla
Social Security Numbers: 583-10-1113 / 584-66-4691
PO Box 232
Naguabo, PR 00718-0232

APPENDIX X

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Kenia M. Cintrón Parrilla, et al.

V. CIVIL CASE: 99-1229 (JAF)

Eli Lilly Industries, Inc., et al.

DESCRIPTION OF MOTION

Date: 4/25/03 Docket #: 83 URGENT MOTION by All Plaintiffs, pro se| for Hearing re: compliance w/settlement agreement|

By: Plaintiffs

O-R-D-E-R

☐ Granted

☐ Denied

☐ Noted

☐ Moot

A hearing to delucidate these matters shall be held on May16/03 130 PM.

4/30/03
Date

/s/ Jose A. Fuste
Jose A. Fuste
United States District Judge

APPENDIX Y

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MINUTES OF PROCEEDINGS

HONORABLE JOSE A. FUSTE
COURTROOM DEPUTY: BECKY AGOSTINI
COURT REPORTER: IVETTE RICHARDSON
COURT INTERPRETER: JAIME SOTOMAYOR

DATE: 05-16-2003
CV. NO. 99-1229 (JAF)

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KENIA CINTRON PARRILLA	ATTORNEYS: JESUS HERNANDEZ SANCHEZ
vs.	
ELI LILLY INDUSTRIES, INC. ET AL.	CARL SCHUSTER

= =

Case called for Hearing as to plaintiff's request to set aside settlement agreement entered by the parties. Plaintiff is advised of her right to appeal, and the Court takes matter under advisement.

/s/ Rebecca Agostini
Rebecca Agostini, Deputy Clerk

APPENDIX Z

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MINUTES OF PROCEEDINGS

HONORABLE JOSE A. FUSTE
COURTROOM DEPUTY: BECKY AGOSTINI
COURT REPORTER: IVETTE RICHARDSON
COURT INTERPRETER: JAIME SOTOMAYOR

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CV. NO. 99-1229 (JAF)

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instructed by them. Plaintiff submits, for the court's benefit, her folders containing her personal statements, Eli Lilly's documents for non-compliance, and also documents as to attorneys' negligence. Matter is taken under advisement, the Court will enter an order accordingly.

/s/ Rebecca Agostini
Rebecca Agostini, Deputy Clerk

APPENDIX AA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA et al.,
Plaintiffs,
v. CIVIL No. 99-1229 (JAF)
ELI LILLY INDUSTRIES, INC.;
HEALTH WELFARE AND
DISABILITY PLAN;
LILLY DEL CARIBE, INC.;
COMPANY X; COMPANY Y,
Defendants.

MOTION IN COMPLIANCE WITH COURT ORDER

TO THE HONORABLE COURT:

COME NOW co-defendants, Lilly del Caribe, Inc., Eli Lilly Industries, Inc. (hereafter referred to as "Lilly") and Eli Lilly Industries, Inc., Health, Welfare and Disability Plan (hereinafter referred to as the "Plan"), through their undersigned attorneys, and very respectfully state and pray as follows:

1. A hearing was held last Friday, May 16 as a result of certain motions filed by plaintiff Kenia Cintrón, pro-se, seeking the Court's assistance, and by her legal counsel, requesting an urgent hearing, and to withdraw as legal counsel.

2. The appearing attorney was requested to provide a brief chronology of the events which have taken place after the agreement signed by the parties on August 14, 2002.

3. In general, the parties agreed that Ms. Cintrón would submit her claim for extended disability benefits to Lilly's Benefit Plan Review Committee within sixty (60) days after the execution of the Agreement, subject to the requirements established by the Lilly Extended Disability Plan and the Lilly Employee Welfare Plan.

4. After the plaintiff submitted her claim dated August 16, 2002, received by the Committee on August 19, 2002, by means of a letter dated September 23, 2002, Ms. Cintrón was requested to undergo an independent rnedica1.evaluation by a neurologist and a psychiatrist to assist the Committee in completing its ongoing evaluation of her claim.

5. After initially agreeing to undergo said evaluations by letter dated October 21, 2002, Ms. Cintrón failed to appear at scheduled appointments and notified Lilly through letter of November 8, 2002, that she would not undergo the required medical evaluations. Under section 6.02 (b) of the Plan, the Committee may require an employee to submit to said evaluations to determine the extent of the claimed illness or injury. The Committee may require the employee to undergo such examination as often as reasonab1y necessary to determine whether the employee meets the definition of "disabled" pursuant to section 2.01 (a) (5) of the Plan.

6. The Committee met on November 13, 2002 to review her claim for benefits and denied the same inasmuch as it was unable to verify her claimed disability and concluded that she failed to provide the necessary information to support her entitlement to disability benefits pursuant to the terms of the Plan.

7. Ms. Cintrón was informed by means of letter dated December 2, 2002 of the Committee's decision and of her right to appeal within 180 days her receipt of the letter. (Copy of the denial letter is enclosed as **Exhibit A)**

8. Ms. Cintrón wrote td tile Employee Benefits Committee on April. 30, 2003 requesting certain information and expressing her intention of eventually filing an appeal. (Copy of the letter is included as **Exhibit B)**.

WHEREFORE, the appearing defendants respectfully submit the foregoing motion in compliance with the Court's May 16, 2003 order.

In San Juan, Puerto Rico, this May 19, 2003.

WE HERBY CERTIFY: That on this same date a true and exact copy of this document was sent, by regular mail to Jesús Hernández Sánchez, Esq., and/or Guillermo Macari, Esq., Hernández Sánchez Law Firm, First Bank Building, Suite 806, 1519 Ponce de León Ave., San Juan, Puerto Rico 00909-1791 and Kenia M. Cintrón Parrilla and Miguel A. García, PO Box 232 Naguabo, PR 00718-0232.

SCHUSTER USERA & AGUILÓ LLP
PO Box 363128
San Juan, Puerto Rico 00936-3128
Telephone: (787) 765-4646
Telefax. (787) 765-4611

By: /s/ Carl Schuster
Carl Schuster
USDC PR No. 201802
cschuster@suas.net

www.lilly.com **Lilly**

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
U.S.A.

Phone 317 276 2000

EXHIBIT A

December 2, 2002

Ms. Kenia Cintrón
P.O. Box 388
Naguabo, PR 00718-0388

Dear Ms. Cintron:

At its November 13, 2002 meeting, the Eli Lilly and Company Benefits Plan Review Committee (the "Committee") reviewed your written request, dated August 16, 2002 and received August 19, 2002, for benefits under The Lilly Extended "Disability Plan (the "Plan"). Consistent with Plan requirements, the Committee previously notified you twice of thirty day extensions necessary to obtain additional information from you and review your claim. Based on the information provided to the Committee at the time of its meeting, the Committee must deny your request for disability benefits. The Committee was unable to verify your claimed disability and determined that you failed to provide necessary information to support your entitlement to disability benefits as required by the Plan.

As you may be aware, the Plan is a self-funded employee welfare benefit plan, The Plan is a component plan of The

Lilly Employee Welfare Plan and is governed by federal regulation under The Employee Retirement Income Security Act of 1974 ("ERISA"), The Benefit Plan Review Committee is appointed by the Eli Lilly and Company Employee Benefits Committee ("EBC") to assist in reviewing claims and administering, among other plans, The Lilly Employee Welfare Plan and its component plans, including this Plan.

Section 6.02(a) of the Plan requires that you submit proof of your entitlement to disability benefits including: 1) the date on which your disability commenced, 2) the cause of the disability. 3) any available objective medical evidence of the disability. 4) the nature and extent of the disability, and 5) the name and address or the Licensed Physician who is providing regular care for your claimed disability. In addition, section 6..02(b) of the Plan specifically provides, in relevant part, that "The Employee Benefits Committee may require an Employee to undergo examination by a Licensed Physician or vocational expert chosen by the Employee Benefits Committee to determine the extent of any illness or injury for which the Employee makes a claim under the Plan. The Employee Benefits Committee may require an Employee to undergo such examinations as often as is reasonably necessary to determine whether the Employee remains Disabled." Subsection 2.01(a)(5) of the Plan, in relevant part, defines "Disability" as "the inability of an Employee to engage, for remuneration or profit, in any occupation commensurate with the Employee's education, training, and experience, provided that the inability results from an illness or accidental bodily injury that requires the Employee to be under the regular care of a Licensed Physician."

www.lilly.com **Lilly**

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
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Because the Committee was unable to verify your claimed disability, your request for benefits was denied. Based on the information provided, the Committee concluded that there appear to be several areas of poor correlation between your reported symptoms, including the severity of your symptoms, and the diagnostic studies you provided. In addition, you failed to provide information necessary to verify your claimed disability as requested. By letter dated September 23, 2002, you were requested to undergo an independent medical evaluation by both a. neurologist and a psychiatrist to assist the Committee in completing its ongoing evaluation. After initially agreeing to undergo such evaluations by letter dated October 21, 2002, you did not appear at scheduled appointments and notified Lilly that you would not undergo such independent medical evaluations by letter dated November 8, 2002.

If you wish to seek an appeal of the Committee's decision, you may submit any additional documents, issues and comments in writing to the EBC at the address; below for consideration at its next scheduled meeting.

Eli Lilly and Company
Employee Benefits Committee, Attn: John J. Purcell
Mail Drop Code 1773
Lilly Corporate Center
Indianapolis, TN 46285-1773

For example, if you can provide information demonstrating proof of your entitlement to disability benefits, that evidence could be reviewed. Specifically, you have complained of severe upper arm pain, neck pain and back pain for several years. The severity of your symptoms, however, are poorly correlated with the diagnostic studies

performed between 1998-2002. X-rays, CT scans, MRI scans, bone scans and Doppler flow studies suggest mild degenerative disc disease without significant flow obstruction or nerve root compression. Such findings are not inconsistent with mild symptoms and/or the aging process. In addition, an emotional disease component is suggested by some evaluators, but the extent of the disease is unclear as well as what effective interventions have been offered and your compliance with such recommendations. As you will recall it was the lack of expected correlation between objective diagnostic studies and your claimed disability that prompted the request that you undergo an independent evaluation of both your physical and psychological health.

You or your representative may review pertinent documents considered by the Committee. Any appeal must be received by the EBC within one hundred eighty (180) days of your receipt of this letter.

Should you decide to appeal, the EBC or its authorized representative; will decide the appeal and notify you or your authorized representative of its decision in writing within 45 day following receipt of the written request for review. Following any adverse benefit determination by the EBC on review, you must either submit the controversy to the Court or file a voluntary dismissal "with prejudice as described in the agreement you entered into August 14, 2002 ("Agreement"). The EBC's notification will include, as does this letter, specific reasons for the decision, including references to any pertinent Plan provisions which the decision is based. If the EBC determines that special circumstances require an extension of time for a final

decision to be made, the review period may be ~extended by an additional 45 days (90 days in total). In that event, the EBC will notify you of the extension prior to the expiration of the first 45-day period, notify you of the special circumstances requiring the extension and the date by which the Plan expects to render a decision, All interpretations, determinations, and decisions of the Employee Benefits Committee as to such an appeal will be final and conclusive. Should the EBC rule in your favor, you will receive disability benefits retroactively to the date you were determined to be first eligible under the Plan as described in the Agreement.

Sincerely,

BENEFIT PLAN REVIEW COMMITTEE

/s/ John J. Purcell

John J. Purcell

Secretary

cc: Jesus Hernandez Sanchez

Certified Mail Number: 7002 0860 0008 6598 1668

EXHIBIT B

Naguabo, PR
April 30, 2003

To: Mr. John J. Purcell
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, Indiana 46285

From: Kenia. M. Cintron Parrilla
PO Box 388
Naguabo. PR 00718-0388

Re: Request of Information for an Appeal of Adverse Benefit Determination

I am requesting from the Lilly Extended Disability Benefits Committee the following information in order to adequately file an Appeal of Adverse Benefit Determination.

1- the specific reasons for the adverse determination:
2- copy of the reference to the specific provisions of the plan on which the benefits determination is based;
3- a description of additional material or information needed to perfect the claims and the reasons such material or information is necessary;
4- copy of a description of the Plan's claim review procedures and the time limits applicable to such procedures, including a statement of claimant's right to bring a civil action under section 502(a) of ERISA following an adverse benefit determination on review;

5- copy of any internal rule, guideline, or protocol relied on making the adverse determination:

6- copy any explanation of the scientific or clinical bases of the determination;

7- copy of any questionnaire, medical form, or medical report to be complete by license physician who is providing the employee with regular care,

8- copy of any other specific information, form, questionnaire, etc, that the Committee may seem necessary to bring and inform me in order to file an appeal.

If you have any doubt please, contact me at:
Tel. (787) 874-0025

/s/ Kenia M. Cintrón
Kenia M. Cintrón Parrilla
Social Security Number: 584-66-4691

APPENDIX AB

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA CINTRON PARRILLA, et al,
Plaintiffs

v. Civil No. 99-1229 (JAF)

ELI LILLY INDUSTRIES, INC., et al,
Defendants

REQUEST FOR REVIEW AND
PETITION FOR ORAL ARGUMENT

TO THE HONORABLE COURT:

Come now plaintiffs, by their counsel and respectfully state and pray as follows:

I. INTRODUCTION

By letter dated August 27)2003) and mailed to plaintiff Mrs. Kenia Cintron ("Mrs. Cintron") and to her attorney on August 27, and received by her counsel on September 2, 2003, Lilly's Employee Benefits Committee (the "Appeals Committee"), denied Mrs. Cintron's appeals from the decision of the Benefit Plan Review Committee (the Committee") denying her application for long term disability under the Lilly Extended Disability Plan (the "Plan"). This appeal was made pursuant to the Plan and the terms of the Settlement Agreement (the "Agreement") reached by the parties on August 14, 2002, copy of which was provided to this Honorable Court, and which governed the steps to be followed to reach a conclusion of this case. The Agreement provides for this request for review within thirty days of the receipt of notice of the decision.

Mrs. Cintron had worked for defendant Lilly del Caribe in Puerto Rico for over twenty years when she became ill in June of 1997, while working at Lilly. Mrs. Cintron went to different doctors including a Neurologist, Dr. Tomas Hernandez ("Dr. Hernandez"), who diagnosed her with Thoracic Outlet syndrome, and other ailments, that in his opinion was irreversible and disabled her from work, since he determined that her condition was work related. He referred Mrs. Cintron to the State Insurance Fund ("SIF").

Mrs. Cintron's ordeal with defendants began in 1997 when she reported her condition and diagnosis to Lilly's in-house doctor, Dr. Felix Matos ("Dr. Matos"). Dr. Matos referred Mrs. Cintron to a physiatrist, Dr. Marcos U. Ramos, who made Mrs. Cintron undergo a physical examination with weights, bendings, and movements, and concluded that Mrs. Cintron had no ailment at all. This tests that Dr. Marcos U. Ramos performed on Mrs. Cintron were characterized as counterindicated and dangerous to her condition by another physiatrist who performed tests on Mrs. Cintron. After this start, defendants denied that Mrs. Cintron's condition was work related and denied her the benefit of a supplementary payment under Lilly's short term disability plan, even though the SIF and Mrs. Cintron's Neurologist, Dr. Tomas Hernandez, had determined her condition to be work related. Furthermore, two occupational therapy experts, one from the SIF and one from Lilly itself examined Mrs. Cintron's work area and advised changes to be made to the equipment and to the way Mrs. Cintron handled her workload. Still defendants insisted; that her condition was not work related. Mrs. Cintron requested information on how to appeal this decision, and on how to obtain the benefits that she was

entitled to, but she received no information nor documentation from defendants, just instructions to keep on visiting Dr. Felix Matos. Mrs. Cintron continued to provide Dr. Matos with copies of the medical reports and tests she was undergoing all the time, but to no avail, because defendants stayed frozen in their position and did not provide Mrs. Cintron with any information regarding her rights to appeal their denial of her supplementary payment rights. Mrs. Cintron wrote them several letters requesting information on how to apply, but nothing happened. When she requested information on how to apply for long term disability under the Plan she was given contradictory information by Dr. Felix Matos and from the Human Resources Department. No copy of the Plan or the procedures on how to apply were given to her. Mrs. Cintron started receiving treatment in the SIF for her work related condition, then after some time she was terminated from employment, and she was later informed that in order to apply for long tern disability under the Plan she had to be an employee. Eli Lilly was delaying the procedures on purpose. It should also be noted that under the Extended Disability Plan (the "Plan") the long term disability does not have to be work related.

These are a few of the things that Mrs. Cintron has had to go through with defendants since June of 1997; the record of the present case backs up these introductory notes.

II. FACTS CONCERNING THE DECISION OF THE BENEFIT PLAN REVIEW COMMITTEE (THE COMMITTEE)

Through a letter dated December 2, 2002, signed by Mr. John J. Purcell, Secretary of the Committee, but received by

Mrs. Cintron on December 10, Mrs. Cintron's application for long term disability was denied. One of the reasons the Committee used to deny plaintiffs petition was that Mrs. Cintron was requested to undergo an independent medical evaluation ("IME") by both a neurologist and a psychiatrist as a requirement for the evaluation of her application, but did no attend (see plaintiff's **Exhibit 8**). The Committee had the legal obligation to issue its decision no later than November 29, 2002, since Mrs. Cintron applied on August 16, 2002, when she sent them by fax on that same day said application, and then by certified mail delivered by the Post Office on August 19. As per section 6.05 (b) of the Plan, the Committee had 45 days to decide, and also it could extend twice for another 30 days the decision, for a total of 105 days; therefore, the Committee violated the Agreement and the Eli Lilly Extended Disability Plan. Since from August 16 until November 29, according to our calculations, there are 105 days, and the Committee took 13 more days than the required 105 days to notify its decision to Mrs. Cintron. See **Exhibit 2,** page 6: Post Office return receipt.

Plaintiff takes the position that the Committee mislead plaintiff because through a letter dated October 2, 2002, signed by the attorney for the Committee, Mr. Gregory Usera (See **Exhibit 4**), informed plaintiff that she had the choice of submitting herself to an independent medical evaluation (IME) or to "leaving the matter to be decide based solely on the information" Mrs. Cintron submitted to the Committee. Precisely, plaintiff chose to submit her claim with the medical evidence she had already sent to the Committee; therefore, the Committee could not go against its own acts and penalize plaintiff for not undergo an IME. Now regarding the request from the Committee about the

IME, we take the position that in no place of the Agreement or of the Plan appears the requisite for an IME. Also, at no time the Committee explain to plaintiff what an IME was. There only reference to an IME that plaintiff had; according to her statement under penalty of perjury (see **Exhibit 1**, paragraph 9) was a procedure explained in the Employee's Manual (Manual del Asociado) by which after the applicant submits her own medical report and the Plan send, the employee to an evaluation of its own, then a third and neutral "independent evaluation" is sought, and this decision is final and unappealable. That is the reason why plaintiff told the Committee to choose the doctor for her to go to, but that she was not choosing to submit to an "independent" evaluation. The Committee kept on insisting on the IME, and Mrs. Cintron insisted that she would submit to an evaluation as stated in the Plan, from a doctor chosen and paid by the Committee, and not to the IME suggested by the Committee which is not defined in the Plan.

III. FACTS CONCERNING THE DECISION OF THE APPEALS COMMITTEE.

Plaintiff through a letter dated May 29, 2003, sent to the Appeals Committee, to the attention of John J. Purcell (see **Exhibit 12),** appealed the denial of her claim. She filed with the Appeals Committee many of the prior medical evidence she had submitted with the Committee, and also included new medical documents (see **Exhibit** 12, page 2) where plaintiff listed the documents she was submitting. Among the new documents submitted it is important to point out a medical report by Dr. Paul J. Zak, Orthopedic Surgeon, Board Certified, from Largo, Florida, dated March

20, 2003 **(Exhibit 12,** pages 27-29). Mrs. Cintron went to see Dr. Zak for an evaluation.. Dr. Zak examined plaintiff and diagnosed the following: 1. Bilateral Carpal Tunnel Syndrome, 2. Bilateral Thoracic Outlet Syndrome, 3. Chronic cervical thoracic and lumbar myofascial pain, 4. Fibromyalgia, 5. Mild degenerative disk disease, cervical and lumbar spine. Dr. Zak informed that there is no cure, and discarded surgery on the cervical or lumbar spine at that time. Also Mrs. Cintron filed a new medical report from Dr. Tomas Hernandez, Neurologists **(Exhibit 12**, page 33) dated May 29, 2003. In such report Dr, Hernandez diagnose a the following concerning plaintiff: 1. Bilateral Carpal Tunnel syndrome, severe, pending releases by hand surgeon, 2. Bilateral Thoracic Outlet Syndrome, also worsening, but surgery not indicated yet, Cervical Radiculopathy, worsened, 4. lumbar Radiculopathy., also worsened, 5. Fibromyalgia, newly diagnosed, 6. Hepatic involvement, possibly secondary to the multiple medications taken, 7. Chronic anxiety with Depression, situational. Another new document filed by plaintiff with the Appeals Committee, was a medical report from Dr. Elizardo Matos Cruz, Thoracic and Cardiovascular Surgeon, dated April 9, 2003 **(Exhibit 12,** pages 34 and 35). In such report Dr. Matos Cruz basically agrees with the findings of Dr. Tomas Hernandez and Dr. Paul Zak. Notwithstanding the massive medical evidence of different doctors from Puerto Rico and the United States, the Appeals Committee insisted in an IME following the same strategy of the Committee. It is important to point out that section 6.05 (b) of the Plan states as follows: "The review of the adverse benefit determination will take into account all new information, whether or not presented or available

at the initial determination. Not deference will be afforded to the initial determination." This section 6.05 does not state that the Appeals Committee may require an employee to undergo a medical examination.

The Appeals Committee through a letter dated July 3, 2003, addressed to plaintiff **(Exhibit 13)**, informed Mrs. Cintron that the Appeals committee had reviewed the information she provided as part of her appeal "but was unlable to verify your clam disability", then the Appeals Committee requested from plaintiff to choose a physician from each discipline from a list to undergo an IME by both a neurologist and a psychiatrist in order to evaluate her claim. We take exception to the phrase "unable to verify", because then the Appeals Committee was obliged to verify with each and every one of the doctors who signed the medical reports describing plaintiffs physical and mental condition, approximately twenty doctors. The record shows that neither the Committee nor the Appeals Committee made such verification, because according to both Committees the verification that they meant was an IME, which as said before is not found in any place of the Plan or the Agreement. Besides, as we recall plaintiff was advised by the Committee that she could file her claim without submitting herself to an IME (see **Exhibit 4**).

We want to call the attention of this Honorable Court to the fact that the Appeals Committee sent a letter by fax to plaintiff, dated August 25, 2003 **(Exhibit 16),** in which the Appeals Committee, realizing that the 90 days in which to decide the appeal were one or two days away, they requested from plaintiff to consent to the amendment of the Agreement and to give them thirty more days, which was

out of the Agreement and out of the Plan according to section 6.05 (a) of the same. In such letter the Appeals Committee threatened plaintiff to deny her appeal if she did not agree to the amendment and to undergo the IME. Plaintiff did not agree on the amendment but informed that she would undergo a medical evaluation according to the Plan **(Exhibit 17),** but not to the IME suggested by the Appeals Committee which was not part of the Plan or the Agreement.

IV. MEMORANDUM OF LAW CONCERNING BOTH COMMITTEES ARBITRARY, CAPRICIOUS, AND UNREASONABLE CONDUCT.

The record shows that both Committees acted arbitrarily, capriciously, and unreasonably. We submit to this Honorable Court that the Appeals Committee procedure was a sham, and it was a rubber stamp of the Committee. The case law is clear that federal court can set aside a decision of the Committee when such decision is arbitrary, capricious, or unlreasonable. **Firestone Tire and** Rubber Company v. Bruch, 489 U.S. 101 (1989). In such case the Court stated that when a denial of benefits is challenged under ERISA and section 1132 (a) (1) (B), the standard of review depends largely upon whether "the benefit gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Firestone at page 115. In that case the Supreme Court pointed out that the standard of review have to be if the plan acted arbitrary and capricious. In the Agreement the parties (it paragraph 9 agreed that thy standard of review was if the Committees acted arbitrarily or capriciously. We acknowledge that plaintiff has the burden

of proving that both Committees acted arbitrarily or capriciously Plaintiff according to the record does not have an uphill battle. We say this because the arbitrary and capricious standard asks only whether a fact finding decision (in our case both Committees) is plausible in light of the record as a whole. **Pari-Fasano v. ITT Hartford Life & Accid. Ins. Co.**, 230 F .3d 415, 419 (1st Cir. 2000). In other word, whether the decision is supported by substantial evidence in the record. See **Doyle v. Paul Revere Life Blue Shield of Ala. Inc**., 144 F .3r 181, 184 (1st Cir. 1998). Based on this case law it is evident that there is substantial evidence in the record to show that both Committees' decisions were taken without any evidence contrary to plaintiff's evidence. Both Committees' decisions were based exclusively on the fact that plaintiff did not submit herself to an IME, which as said before is not found in any place of the Agreement or of the Plan. The Court should take notice that part of the decision of the Committee was based on the following: "...the Committee concluded that there appear to be several areas of poor correlation between your reported symptoms, including the severity or your symptoms, and the diagnostic studies you provided." (**Exhibit 8,** page 1). This conclusion is not supported with anything. The Committee offers no reasons for their conclusion; they cite no medical authorities, nor doctors that made them arrive at that conclusion, even though Mrs. Cintrón requested they in writing to be specific about their conclusion and findings, and to tell her exactly what additional specific information they needed (see **Exhibit 1,** paragraph 7), Therefore, their decision was arbitrary and capricious.

V. REQUESTS FROM PLAINTIFF

Plaintiff requests from this Honorable Court, based on the record as a whole, including all the medical evidence as: follows:

1. To set aside both the Committee and the Appeals Committee decisions because of the arbitrary and capricious nature the decisions; and

2. To grant plaintiff's application for long term disability with the right to obtain all retroactive benefits she has been denied since the beginning of her disability; and

3. To relieve plaintiff of her obligation as per paragraph 4 of the Agreement of returning any amount given to plaintiff by defendants if she is granted the long term disability, because of the breach of the Agreement and the Plan by defendants, and any other obligation under the Agreement; and

4. Attorney's Fees; and

5. Any other relief that the Court deem proper.

WHEREFORE, plaintiffs respectfully request from this Honorable Court to grant as requested.

RESPECTFULLY SUBMITTED.

Certification: A true copy of this motion and exhibits have been sent on this same date by regular mail to: Carl Schuster, Esq., Schuster, Usera & Aguilo, P.O, Box 363128, San Juan, PR 00936~3128.

25

In San Juan, Puerto Rico, this ~~24~~th of September 2003.

HERNANDEZ SANCHEZ LAW FIRM
First Bank Bldg., Suite 806
1519 Ponce de León Ave.
San Juan, PR 00909
Tel. 722-5814; Fax 725-1112

/s/ Jesus Hernandez Sanchez
JESUS HERNANDEZ SANCHEZ
USCD-PR 109208

/s/ Gullermo Macari
GUILLERMO MACARI
USDC-PR 206308

Exhibit No. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA CINTRON PARRILLA, et al.
Plaintiffs
v.
ELI LILL Y INDUSTRIES, INC., et al.
Defendants

Civil No.
99-1229 (JAF)

STATEMENT UNDER PENALTY OF PERJURY

I Kenia Cintron Parrilla, of legal age, declare under penalty of perjury the following:

The decision of the Benefit Plan Review Committee (the "Committee") denying my application for long term disability, and the decision of the Employee Benefits Committee (the "Appeals Committee"), which had the duty to review the Committee's denial, were arbitrary, capricious, and unreasonable, and both have shown a lack of good faith., as follows:

1. I submitted to the Committee all the medical evidence or information showing that I was disabled and entitled to long term disability (**Exhibit 2**, containing 75 pages) as described in section 6.02 of the Eli Lilly Extended Disability Plan (the "Plan, which is part of the Agreement signed by the parties.. For example, in **Exhibit** 2, page 9, Dr. Tomas Hernandez, Neurologist, states in the Prognosis of Kenia Cintron the following:

> "Considered to be extremely poor. I still consider this patient to be totally and permanently disabled to perform any gainful occupation. I consider the loss

of physiologic functions computed by the State Insurance Fund to be rather conservative. I would add another 10% due to the cervical radiculopathies and thoracic outlet syndrome. Also the emotional problems should rise another 5%, making the total a 60% loss of her general physiologic functions."

2. I submitted the medical evidence and complied with the requirements of Section 6.02 of the Plan, and also on September 26,2002, I wrote to Mr. John J. Purcell, who according to the Agreement was my liaison with Lilly's Committee(see footnote 4 of the Agreement), asking him what additional information was require in order to my claim **(Exhibit 3**, containing of 3 pages). In such letter I stated:

"In my claim, I submitted independent medical evaluations from about seventeen different doctors that certify my medical condition. My claim also included updated information. In my opinion, there are more than enough evidence, evaluations, documentation, data, etc. to make a decision. Even thought, is any information missing from the claim that I submitted in August 16, 2002? If yes, what information **is required** in order to complete my claim?

On October 2, 2002, the Committee wrote my attorney Jesus Hernandez Sanchez dated the same date. Such letter was signed by the attorney of the Committee Mr. Gregory T. Usera. My attorney mailed to me copy of such letter through a letter of his dated October 4. I received the copy of Mr. Usera's letter after October 5. In said letter I was instructed by Mr. Usera that I had the right to decline the

suggestion to submit myself to an Independent Medical Evaluation ("IME"), and that I could .submit my application based solely "on the information had already submitted."

3. Notwithstanding the fact that I followed the instructions of the Committee in submitting my case with the medical evidence that the Committee had already **(Exhibit 2),** and also submitting additional medical information afterwards by letter of October 12, 2002 (**Exhibit 5,** containing 9 pages, which included at page 4 the diagnosis of Dr. Delfin Bernal Echeandia, Radiologist, stating that Mrs. Cintron has: "Compression of the subclavian arteries bilaterally during the hyperabduction maneuver producing decrease flow distally"). At page 3, a diagnosis of Dr. José Eddie, Bisbal, Physiatrist (See page 2 and 3 of **Exhibit 5**), which is as follows:

> "1. Finding on EMG (electromyographic Examination) highly suggest Bilateral C5-C6 root lesion.
>
> 2. Finding On NCV (nerve conduction velocities) compatible with Carpal tunnel Syndrome worst on RT side.
>
> 3. Finding on F waves compatible with Bilateral Thoracic Outlet Syndrome.
>
> Note: All above findings are worst than previous studies."

And by letter of November 13, 2002 (**Exhibit 6**, containing 3 pages), which includes at page 3, a psychiatric diagnosis of Dr. Hector L. Torres, Psychiatrist, who diagnosed a "SEVERE MAJOR DEPRESSION RECURRENT."

I was denied the benefit because I did not choose to submit to the IME. I had studied and read thoroughly the contents of the Plan and of the Agreement and in no place of any of those documents there is a requirement that I should submit myself to an Independent Medical Evaluation (IME).

4. A clear manifestation of bad faith from the Committee, represented by John .J, Purcell, is shown by a letter sent to me, dated October 24, 2002 **(Exhibit 7**, containing 3 pages), where he stated, in violation of the Agreement, that as a deferred service employee because I was terminated, I was only entitled to make a choice between two options: 1). To start receiving at age 65 $1315.38 beginning on March 1 ,2021, or 2). Where payment begins when I have attained the equivalent of 80 points where I would receive $447.23 beginning January 1, 2007. This letter was sent to me before the Committee decided on my application for long term disability. This means that they were prejudging my application with the intention to deny the same, because according to paragraph 4 of the Agreement, which is already part of the court record, if my application would have, been granted I would have been placed in the category known as "Early Retirement Benefit Equivalent" or "50 percent of the Employee Average Final Earnings" and to start receiving immediately the benefits of retirement, because if my application was approved I would not have been considered as a terminated employee. Therefore, the Committee had already made the decision of not granting my application.

Because the Committee was describing me as a terminated employee. According to the Plan a terminated employee

could not apply for long term disability (it has to be an employee working for the company when the application is made), but the parties had agreed that I was to be considered as a regular employee in order to apply for the disability benefits. See paragraphs 3 and 4 of the Agreement.

5. Through a letter dated December 2, 2002, signed by Mr. John J. Purcell, Secretary of the Committee, my application was denied, and one of the reasons of the denial was that I was requested to undergo to an IME and I choose not to (**Exhibit 8**, containing 3 pages). This reason is contrary to what attorney Gregory T. Usera, in representation of the Committee, stated in his letter of October 2, 2002 (Exhibit 4) that I had the choice of not submitting to the IME and instead to submit my claim based solely on the medical evidence I had already sent to the Committee, which is included in Exhibits 2, 5, and 6. This decision is capricious, arbitrary, unreasonable, and denotes bad faith because it goes against their own acts.

6. Another proof of bad faith from defendant is **Exhibit 9,** consisting of 2 pages, herein attached. In this Exhibit defendant reported to Puerto Rico Department of Treasury that it paid me for services rendered the amount of $40,000.00, which is not true. At page 6 of the Agreement the $40,000.00 was paid to me for my damages and not for any service or work rendered because as a matter of fact I had not rendered any services to defendant since 1997 when became sick because of the nature of my work with defendant.

7. Another example of the arbitrary and capricious attitude of the Committee, which also shows bad faith, is

that the Committee did not include in its decision, as ordered by Section 6.05 (a) of the Plan, all the information listed in said section from 1 to 6. Then I wrote a letter, dated April 30, 2003, to Mr. Purcell (**Exhibit 10,** containing 1 page) requesting, among others, "a description of additional material or information needed to perfect the claim and the reasons such material or information is .necessary". This information as described in such section was needed in order to prepare my appeal. My letter was never answered before the appeal. Then after I appealed and requested the same information on my appeal letter again, I received a letter dated June 5, 2003, from Mr. Purcell stating that they had already answered her questions in the denial letter, and he attached the denial letter **(Exhibit 11,** containing 4 pages). I reviewed the attached letter which is **Exhibit 8** already mentioned before, and there was no description of any additional material or information. They do not specify what specific information they need to correlate my symptoms with the objective diagnostic studies in connection with my claim of disability. They left me without any orientation whatsoever, because they wanted me to undergo an IME which was not required neither by the Plan or the Agreement, or attorney Usera's letter **(Exhibit 4)**.

8. I had to file my appeal without the information I had requested. Through a letter dated May 29, 2003, I informed the Appeals Committee that I was appealing, and attached to such letter was a list of medical documents which included many of the documents I had already filed when I submitted my claim, plus new medical evidence which is listed in **Exhibit 12,** containing 36 pages. After filing my appeal I received a letter from Mr. Purcell, dated July 3,

2003 **(Exhibit 13,** containing 4 pages) when again requested that I choose a specialist from a list, and to submit myself to an independent medical evaluation (IME). In such letter they quote section 6.02 (b) which entitles the Committee to require an employee to undergo examination by a licensed physician or vocational expert chosen by the committee to determine the extent of any illness or injury for which the employee makes a claim under the Plan. I answered their letter through a letter dated July 16, 2003 (**Exhibit 14,** containing 4 pages). In the same I informed the Appeals Committee that in no place of the Agreement or in the Plan it was required for an applicant for long term disability to choose a specialist from a list and to submit to an IME, and that the Appeals Committee was acting contrary to the Agreement and the Plan. Also, I informed the Appeals Committee in such letter that I will undergo the medical evaluations as required in section 6,02 (b) of the Plan, which means that the Appeals Committee has to choose the physician and then notify me to appear before him for the medical evaluation. Also, asked myself what doctor's evaluation could determine retroactively if I was disabled in 1997, 1998, 1999, 2000, 2001, and 2002, since I had already submitted evidence from approximately seventeen doctors to the Committee. And, also, medical evidence was submitted to Dr. Felix Matos, Eli Lilly's in-house doctor, since I became disabled in 1997. Also, I submitted new medical evidence to the Appeals Committee. For example, a Medical Report from Dr. Paul J. Zak, Orthopedic Surgeon, from Largo, Florida (**Exhibit 12,** pages 27, 28, and 29). In such Report, Dr. Zak confirmed that I have bilateral thoracic outlet syndrome, diagnosed through electrodiagnosis and through vascular studies; also,

that I have chronic cervical thoracic and lumbar myofascial pain, and bilateral carpal tunnel syndrome. Also I submitted a new Medical Reportt Dr. Tomas Hernandez, Neurologist, dated May 29, 2003 (**Exhibit 12,** page 33). In such Report Dr. Hernandez agrees with Dr. Zak. Dr. Hernandez concluded that all my medical conditions "were a direct or indirect result of the patient's job". Dr. Hernandez also stated: Unfortunately, the functional prognosis for this patient is poor and all the clinical entities mentioned are considered to be permanent and progressive in nature". In view of such objective and numerous medical conclusions of so many doctors who examined and treated me deeply felt it was really unreasonable, capricious, and arbitrary to request me to undergo an independent medical evaluation even when the Committee never specified which kind of medical information they needed. I even requested them to send me a questionnaire with the specific questions concerning what king of specific medical information they needed.

9. The Appeals Committee did not answer my letter of July 16, 2003, nor they informed me of the doctor that I was to report to for the examination, then through a telephone call I received on Friday, August 22, 2003, at approximately 3:30pm. from one who identified himself as Charlie Grandy (he even spelled his last name to me) he requested from me to give the Appeals Committee another extension of thirty days to inform me to which doctor .I was supposed to report to for examination (See **Exhibit 15**). The Appeals Committee had already used its extension term of 45 days as stated by the Plan. That is, the thirty day extension was beyond what the Plan authorized the Appeals Committee to reach a decision. Notwithstanding this

capricious request for extension I was always willing to undergo the medical evaluation, but as stated under section 6.02 (b) of the Plan which does not contemplate to choose a specialist from a list nor an independent medical evaluation (IME). Neither the Committee nor the Appeals Committee explained was an independent medical evaluation, but I understood as per my study of the Employee's Manual (Manual del Asociado), which is not part of the Plan, that a decision of an IME was to be taken as final by both Committees because I thought that the procedure they were using was of the Employee's Manual and not the procedure of the Plan. The procedure of the Plan was clear to me because section 6.02 (b) of the Plan clearly establishes that they were supposed to choose a doctor and tell me to go to that doctor for examination, but the Committee was following the same procedure of the Employee's Manual; according to which, in case of incompatibility or difference a certification by a third doctor selected by both was to be considered final. In addition, in one occasion Dr. Felix Matos, Lilly's in-house doctor, told me about an evaluation of the specialist selected by both that it was supposed to be final. This explanation from Dr. Matos came to my mind when I was told to select the specialists and to submit to what the Committee called an IME. Also, in a letter of October 2, 2002 signed by attorney Gregory T. Usera (**Exhibit 4**) I was informed that the medical evaluation to be made by the doctor out of the three to be chosen, was going to be send to Dr. Matos and not to Mr. Purcell who was my contact according to the Agreement. I thought that if it was going to be sent to Dr. Matos then the report would be final.

10. Through a letter dated August 25, 2003, faxed to me and signed by Mr. Charles A. Grandy, from the Employees Benefits Committee., he requested from me to give my consent for a thirty day extension in writing, and also to submit myself to an IME. He put as a condition that I should answer on or before noon of August 26, 2003 **(Exhibit 16,** containing 2 pages). Then through a letter dated August 25, 2003, signed by myself and my husband and addressed to Mr. Grandy and copied to Mr. Purcell **(Exhibit 17,** containing 3 pages), I decided not to agree on the thirty day extension because the information stated on Mr. Grandy's letter was not correct and because he also specified that by giving my consent I was also agreeing to what was written in the letter and to amend the Agreement signed by the parties, and this was unreasonable. Then through a letter dated August 27, 2003, and faxed to me on that same date, the Appeals Committee denied my claim using as an excuse that I did not submit the necessary information to support my entitlement to disability benefits as required by the PLAN because I did not submit myself to an IME **(Exhibit 18,** containing 2 pages). Also the Appeal Committee did not comply with the section 6.05 (b) (1-8) because it failed to submit to me all the required information under this section.

11. Although defendants in the Agreement stipulated with the undersigned that if the Committee approved my long term disability application my rights would go back to the year 1998, through a letter dated August 15, 2003, unsigned but under the name of Mr. John J. Purcell, who appears in such letter as the Manager of the Employee Benefits **(Exhibit 19,** consisting of 3 pages), again he tells me at page 2, that I am considered a deferred service

employee (see also **Exhibit 7**, and paragraph 4 above). I bring to the attention of the Court **Exhibits 7** and **19** to show the bad faith of defendants, and that my application was already prejudged.

12. The Committee and the Appeals Committee in their decisions and actions were arbitrary, capricious, and unreasonable, they acted with bad faith, and they violated the Agreement and the Plan.

13. Even though section 6.05 (b) of the Plan, titled Claims Procedures, does not require the Appeals Committee to order the applicant to undergo a medical examination, I was willing to abide by their request according to section 6.02 of the Plan; see **Exhibit 14,** page 2: "Kenia will only undergo to medical evaluations as per required and stated under section. 6.02 (b) of the Plan".

14. I certify under penalty of perjury that I understand the meaning of this statement written herein. This statement has been made and signed freely and voluntarily, and without and without coercion, and I also consulted with my attorneys as to the contents of these statements.

In San Juan, Puerto Rico, on this September 23, 2003.

/s/ Kenia M. Cintrón

KENIA CINTRON PARRILLA

Exhibit No. 2

Fax

August 16, 2002

To: John J. Purcell
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, Indiana 46285
Tel. (317) 276-3081
Fax. (317) 433-8295

From: Kenia M. Cintrón
PO Box 388
Naguabo, PR 00718-0388

I have been instructed to contact you in order to initiate my claim for the Lilly.Extended Disability Benefits. Also, I have been notified that the benefits will be retroactive to May 19, 1998. Actually, I was informed that you are the person I must contact now on regarding my claim.

In order to star the disability claim process, today, I am sending you the Notice of Claim and the listed support documentation that supports my disability claim, by express mail. Also, I am sending to your attention the same Notice of Claim which includes a list of the support documentation, by fax.

If you have any doubt or need more information you can contact me at:

Telephone: (787) 874-0025.

Sincerely,

/s/ Kenia M. Cintrón
Kenia M. Cintrón Parrilla
Social Security Number: 584.66-4691
Number of pages including this cover sheet: 4

Certified and Express Mail Number: EJ467781707US

August 16, 2002

To: Mr. John J. Purcell
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, Indiana 46285

From: Kenia M. Cintr6n Parrilla PO Box 388
Naguabo, PR 00718.0388

Re: Notice of Claim for the Lilly Extended Disability Benefit

As I have been instructed, I am submitting you my claim for the Lilly Extended Disability Benefits. *Also,* I have been informed that the benefits will be retroactive to May 19, 1998. Below Is the list of the documentation regarding my medical case: medical reports, medical studies and evaluations, determinations of *Corporación del Fondo del Seguro del Estado* (worker's compensation), and) the social security administration approval and further revision.

1- *Report of Neurologic Evaluation* (April 4, 2001)
Tomas Hernandez, MD, neurologist – 3 pages
2- *SSEP* (June 11, 1997) – Tomas Hernandez, MD, neurologist – 2 pages
3- *Informe Radiológico* (June 4, 1997)
Centro Radiodiagn6stico de Carolina – 1 page.
Carmen S. Cabán Espinosa, MD, radiologist
4- *Electromyography and NCV Examination* (August 29, 1997) – Dr. Florencio Lao, physiatrist – 4 pages

5- *Non-Invasive Vascular Division Arterial Doppler and Duplex Evaluation of Upper Extremities* (October 2, 1997) – Advance Imaging Interventional Center.
Delfin Bernal - Echeandia, MD., radiologist – 4 pages

6- *Electromyography and NCV Examination* (March 23, 1998) – Centro de Terapia Física Santa Rosa, Dr. José Eddie Bisbal, physiatrist – 3 pages

7- *Electromyography and NCV Examination* (March 25, 1998) – Centro de Terapia Física Santa Rosa. Dr. Jose Eddie Bisbal, physiatrist – 3 pages

8- *Non-Invasive vascular Division Arterial Doppler and Duplex Evaluation of Upper Extremities* (March 24, 1998) – Advance Imaging Interventional Center - Delfin Bernal- Echeandia, MD, radiologist – 4 pages

9- *Neurology Evaluation* (April 15,1998) – Corporación del Fondo del Seguro del Estado, Dr. M. J. Hernández, neurologist - 2 pages

10- *Cervical Spine* C. *T. Scan* (October 1, 1997)
Condado X- Ray F.S.E. – José E. González-Camacho, MD, radiologist – 1 page

11- *MRI of Cervical Spine Without* Contrast (March 17, 1998) – Instituto Central de Diagnóstico
Oscar Zavala, MD – 1 page

12- *Examen Electromiográfico - Extremidades Superiores* (March 12, 1998) – Dr. Rita L Amadeo, physiatrist – 1 page

13- *Examen Electromiográfico - Extremidades Inferiores* (March 12, 1998) – Dr. Rita L. Amadeo, physiatrist – 1 page

14- *Thoracic Surgeon Evaluation* (July, 23, .1998) – Corporación del Fondo del Seguro del Estado Dr. A. Menéndez, thoracic surgeon ard . – 1 page

15- *Decisión del Administrador Sobre Tratamiento Médico* (June 18, 1997) – Corporación del Fondo del Seguro del Estado – Dr. Hilario L. Rentas- 1 page

16- *Decisión del Administrador Sobre Tratamiento Médico* (August 25, 1998) - Corporación del Fondo del Seguro del Estado – Dr. Pedro F. Matías – 1 page

17- *Decisión del Administrador* (March 5, 1999) – Corporación del Fondo del Seguro del Estado Ana H. Sánchez Ortega –1 page

18- *Decisión del Administrador Sobre Tratamiento Médico* (November 21, 1997) – Corporación del Fondo del Seguro del Estado – Dra. Mildred Jiménez Castro - 1 page

19- *Decisión del Administrador Sobre Tratamiento Médico* (February 3, 1999) – Corporación del Fondo del Seguro del Estado – Dr. Pedro F. Matías – 1 page

20- *Decisión del Administrador* (August 13, 1999) - 1 page Corporación del Fondo del Seguro del Estado Ana H. Sánchez Ortega

21- *Certificación* January 8, 1998 – Corporación del Fondo del Seguro del Estado – Silvia Rodríguez Montañés – 1 page

22- *Certificación* (September 17, 1999) – Corporación del Fondo del Seguro del Estado – Aida Rosario Rivera – 1 page

23- *Dorsal Spine (AP Lateral), Lumbar Sacral Spine (AP Lateral and Oblique)* (February 28, 2000) – Humacao X

Ray & Ultrasaund – Francisco Vargas Soto, MD., radiologist – 1 page

24- *MRI of the Lumbosacral Spine* (April 2, 2002) – Carlos J Nassar, MD, radiologist – 1 page

25- *Cervical Spine MRJ* (March 12, 2002) – Carlos J Nassar, MD, radiologist – 1 page

26- *Electromyography Examination* (April 24, 2002) Centro Fisiátrico Torres, Inc., Luz Torres Romero MD, physiatrist – 1 page

27- *Nerve Conduction Examination* (April 24, 2002) Centro Fisiátrico Torres, Inc., – Luz Torres Romero, MD, physiatrist – 1 page

28- *Wholebody Bone Scan With Flow* (April 22, 2002) NU Scan Center, Carmiña M. Ruiz Rodríguez, MD Chief Nuclear Medicine Service – 3 pages

29- *Psychiatric Questionnaire* (October 2, 1997) R. Fabre, MD., psychiatrist – 3 pages (both sides)

30- *Psychiatric Medical Report* (May 20, 1998) Dr. Hector L. Torres, psychiatrist – 4 pages

31- *Evaluación Psiquiáitrica* (August 24,1998) Dr. Héctor L. Torres, psychiatrist – 4 pages

32- *Evaluación Psiquiátrica* (June 28, 1999) Dr. Héctor L. Torres, psychiatrist – 5 pages

33- *Notice of Decision - Fully Favorable* (July 15, 1999) Social Security Administration, – Ramón E. Quinones, Administrative Law Judge -15 pages

34- *Important Information* (December 2001) – Retirement Survivors, And Disability Insurance – Social Security – 3 pages

If you have any doubt or need any other information you can contact me at: Tel. (787) 874-0025.

/s/ Kenia M. Cintrón
Kenia M. Cintrón Parrilla
Social Security Number: 584-66-4691

TRANSACTION REPORT

AUG-16 02 10:03 AM

FOR: KENIA M. CINTRÓN 8740025

SEND				
DATE	START TIME	RECEIVER NOTE	PAGES	
AUG-16	10:01 AM	13174338295	4	1'29" OK

Hoy 16 de Agosto de 2002 a las 10:00 a.m. aprox. Hable con el sr. John J. Pucell indicándole que estaba enviando por fax mi reclamación de beneficios de incapacidad prolongada y que le estaba enviando por correo la reclamación junto con los documentos que apoyan dicha reclamación.

El Sr. John J. Pucell me indicó que la próxima reunión del Comité sería en Septiembre 10, 2002. También me notificó que en una semana tendría información relacionada a mi caso ya sea solicitando alguna otra información necesaria o la decisión de mi caso.

TRANSLATION

Today, August 16, 2002, at approx. 10:00 am, I spoke to Mr. John J. Purcell, indicating to him that I was sending my extended disability benefits claim by fax, and that I was sending him the claim with the support documentation of such claim, by mail.

Mr. John J. Purcell indicated to me that the Committee's next meeting will be held on September 10, 2002. He also notified me that within a week I would be receiving information in relation to my case, either asking for any necessary information, or the decision of my case.

United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation made
and/or submitted by the interested party
/s/ Annie Flores
Certified Court Interpreter Administrative
Office of the United States Courts

Tomás Hernandez, MPH; M.D
Neurología
Electromiografía
Calle Santa Cruz Núm. 73, Suite 308
Bayamón, PR 00959 – Tel. (787) 785-4125

April 4, 2001

REPORT OF NEUROLOGIC EVALUATION performed with patient Kenia M. Cintrón Parrilla, Social Security #584-66-4691. Initial Evaluation: September 11, 1995. Revaluation: Seen in twenty six different occasions, being the last one on February 7, 2001.

History:

This is the case of a 45 years old dextral housewife and former pharmaceutical industry supervisor who was initially seen due to head trauma (1995), but on June 10, 1997 was evaluated because of sudden pain in both shoulders and arms of several hours duration after reaching for an object. The pain persisted afterward, but no as severe as it was first experience, and was worsened y activity. Initially, at the evaluation date, she was found to have bilateral positive Adson's maneuver, but negative Tinel's signs at that time. Later, in 1999, the Tinel's signs became apparent and the diagnosis of Carpal Tunnel Syndrome, together with the Thoracic Outlet Syndrome were also confirmed by electrophysiologic studies. Arterial flow studies of both arms revealed that the Thoracic Outlet Syndrome was also vasculogenic.

The patient was referred and admitted at the State Insurance Fund, managed until 1998 and later discharged with the diagnosis of Lumbar Radiculopathy and Bilateral

Carpal Tunnel Syndrome, that were considered by that institution to be related to her occupation. Ms. Cintrón was discharged still unable to work. She was granted a full disability by the state insurance fund which is broken down as follows: 5% due to Cervical Strain; 5% due to Lumbosacral Strain; 10% due to right Carpal Tunnel Syndrome; 10% due to left Carpal Tunnel Syndrome; 10% due to Lumbar Radiculopathy; 5% due to emotional complications, for a total of 45% of loss of general physiologic functions. On the other hand, Ms. Cintrón was also granted a full disability by the social security Administration, due mostly to emotional factors.

During her rather extensive evaluation, she was also found to suffer of Costochondritis and Cervical Radiculopathies. The objective evidence in included with this report.

Presently, the patient still complains of headaches, insomnia, dizziness, depression, anxiety, numbness and pain of both arms and legs that is becoming increasingly worst in spite of rest and conservative management. On her most recent visit, Ms. Cintrón gave history of a possible liver disease and studies were ordered. All her medications were discontinued on February 7, 2001 due to this possibility.

Past History

History of bronchial asthma. Allergic to Percocet and Lorabid. Status post bilateral Salpingoophorectomy. Does not tolerate Wygesic. Cerebral contusion after head trauma on 1995 with post traumatic headaches.

Neurologic Evaluation

I. General:

Well developed, mildly obese female who like stated age.

B.P. – 120/70; Pulse – 80/min.; Height – 63; Weight – 159#.

Head and Neck	-	No abnormalities detected except fro those related to the neurologic system. She constantly wears a soft cervical collar.
Thorax and Abdomen	-	Normal head sounds. No abdominal masses nor visceromegaly.
Extremities	-	Normal except for changes related to the neurologic system.

II. General Cerebral Functions:

Alert, cooperative patient oriented in all three spheres, well kept and groomed. There are no ideas of reference, illusions nor allusinations. Shows market anxiety, depression and concern about her condition.

III. Specific Cerebral Functions:

No agnosia, apraxia nor aphasia.

IV. Cranial Pairs:

No deficit detected in any of the cranial pairs tested.

V. Motor System:

Adequate muscle tone and size. There is no obvious atrophy, weakness nor tremor in any of the muscles tested.

Significant loss of grip and fingering strength, abductors of both arms, and both quadriceps.

VI. Sensory System:

Romberg teat is negative. No sensory deficit in any of the modalities tested..

VII. Cerebellar System:

There is no incoordination, ataxia, intentional tremors, dysmetria nor dysdiodochocinesia.

VIII. Reflexes:

Deep Tendon - Bilateral and symmetrically present (2+) in the arms and legs.

Superficial - Present

Pathologic - Absent

IX. Signs of root Meningeal Irritation and Nerve Compression:

Negative Hoover, Lasegue's, Kerning's nor Brudzinki's. Tinel's signs are present in both wrists. Adson's maneuver are positive in both arms. Straight leg raising up to 45%, bilaterally.

X. Back and Vertebral Column:

There is a mild kyphosis, but no kyphoscolitis nor tender spots. Severe neck and both shoulders muscle spasm.

Range of Motion of Neck and Back with Possible Range in Parenthesis:

Cervical Region:

Lateral Flexion - (0-40) R-20° ; L-20°

Flexion - (0-30) 20°

Extension - (0-30) 20°

Rotation - (0-80) 60° , bilateraly

Lumbo Sacral Region:

Extension - (0-20) 15°,

Lateral Flexion - (0-20) R-10°; L-10°

Thoracolumbar Region:

Anterior Flexion- (0-90) 60°

DIAGNOSTIC IMPRESSION:

1. Status Post Cerebral Contussion.
2. Post Concussion Syndrome.
3. Bilateral Thoracic Outlet Syndrome, both neurogenic and vasculogenic, related.
4. Bilateral Carpal Tunnel Syndrome, related.
5. Costochondritis.
6. Cervical Bulging Discs.
7. Cervical Radiculopathies, related.
8. Chronic Anxiety with Depression, situational.

PROGNOSIS:

Considered to be extremely poor. I still consider this patient to be totally and permanently disabled to perform any gainful occupation. I consider the loss of physiologic functions computed by the State Insurance Fund to be rather conservative. I would add another 10% due to Cervical Radiculopathies and Thoracic Outlet Syndromes. Also the emotional problems should rise another 5%, making the total a 60% loss of he general physiologic functions.

/s/ Tomás Hernández

Tomás Hernández, M.D., M.P.H.

CAROLINA BREAST CLINIC
Carolina Shopping Court. - Ofic. #12
Tel. 257-0677
CENTRO RADIODIAGNOSTICO
DE CAROLINA
Muñoz Rivera 160 Sur
Tels. 762-8216•762-0110•762-0166

INFORME RADIOLOGICO
(Radiologic Report)

Nombre (Name): Cintrón Parrilla, Kenia M. Edad: 41
Dirección (Address): P.O. Box 232
Fecha del Examen (Exam Date): 06/04/97
Naguabo, P.R. 00718 Telefono: 874-0025
Referido por (Referred by): Dr. Lidia García-García

COMPLETE CERVICAL SPINE: There is straightening of paravertebral muscle spasm. The vertebral bodies and disc spaces appear normal.

LUMBOSACRAL SPINE: There is straightening of paravertebral muscle spasm. The vertebral bodies and disc spaces appear normal.

/s/ Carmen S. Caban Espinosa
CARMEN S. CABAN ESPINOSA, MD
RADIOLOGIST

Dr. Florencio Lao Sam
Physical Medicine
And
Rehabilitation

Ave. Roberto Clemente
BloQ. 117A No.-1
Villa Carolina, PR 00630
Tels. 762-4940 / 257-1840

ELECTROMYOGRAPHIC and NCV Examination

Name Kenia Cintrón Sex F Age 41 Date 8-29-97
Address
Requested Procedures EMG and NCV Upper and Lower Extremities
Clinical Diagnosis Cervical Radiculopathy Referred by
Lumbar Radiculopathy

History and Clinical Findings:

This is a 41 y/o female patient who states history of cervical, thoracic, lumbosacral pain radiating to both upper and lower extremities associated with pain, numbness, weakness, cramps, muscle tremor, electric like sensations at both upper and lower extremities hands and feet since about March or April of 1997.

Muscles	Insertion Activity			Rest				
Upper Extremities **Right**	WNL	↑	↓	Silence	Positive waves	Fibrillations	Fasciculations	High Freq. Disch.
Deltoid C_5		√			√	√		
Biceps C_{5-6}		√			√	√		
Brachioradialis C_{5-6}		√			√	√		
Triceps C_7		√			√	√		
Abd. Pollicis brevis C_8 T_1		√		√				
Abd. digiti quinti C_8 T_1	√			√				
Left								
Deltoid (Axillar)		√			√	√		
Biceps (Musculocut.)		√			√	√		
Brachioradialis (Radial)		√			√	√		
Triceps (Radial)		√			√	√		
Abd. Pollicis brevis (Med.)		√		√				
Abd. digiti quinti (Ulnar)	√			√				
Lower Extremities Right								
Quadriceps L_{2-4}	√			√				
Tibialis Ant. L_{4-5}		√			√	√		
Ext. Hall. Longus L_5S_1		√			√	√		
Gastroc (Medial) S_{1-2}		√			√	√		

Muscles	Insertion Activity			Rest				
Lower Extremities **Right**	WNL	↑	↓	Silence	Positive waves	Fibrillations	Fasciculations	High Freq. Disch.
Gastroc (Lateral) L_5S_1		√			√	√		
Paravertebrals L_4	√			√				
L_5		√			√	√		
S_1		√			√	√		
Left								
Quadriceps Femoral	√			√				
Tibialis Ant. (Com. Per.)		√			√	√		
Ext. Hall. Long.(Com. Per.)		√			√	√		
Gastroc Medial (Tib. Pos.)		√			√	√		
Gastroc Lateral (Tib. Pos.)		√			√	√		
Paravertebrals L_4	√			√				
L_5		√			√	√		
S_1		√			√	√		
Others								
Paravertebrals								
C_5, C_6, C_7 P.		√			√	√		

Muscles	Motor Units								
				|Amplitude|		Duration		
Upper Extremities **Right**	Triphasics	Poliphasics Increased	WNL	↑	↓	WNL	↑	↓	None evoke
Deltoid C_5		√		√			√		
Biceps C_{5-6}		√		√			√		
Brachioradialis C_{5-6}		√		√			√		
Triceps C_7		√		√			√		
Abd. Pollicis brevis C_8 T_1	√		√			√			
Abd. digiti quinti C_8 T_1	√		√			√			
Left									
Deltoid (Axillar)		√	√	√			√		
Biceps (Musculocut.)		√		√			√		
Brachioradialis (Radial)		√		√			√		
Triceps (Radial)		√		√			√		
Abd. Pollicis brevis (Med.)	√		√			√			
Abd. digiti quinti (Ulnar)	√		√			√			

Muscles	Motor Units								
				|Amplitude|			Duration |		
Lower Extremities **Right**	Triphasics	Poliphasics Increased	WNL	↑	↓	WNL	↑	↓	None evoke
Quadriceps L_{2-4}	√		√			√			
Tibialis Ant. L_{4-5}		√		√			√		
Ext. Hall. Longus L_5S_1		√		√			√		
Gastroc (Medial) S_{1-2}		√		√			√		
Gastroc (Lateral) L_5S_1		√		√			√		
Paravertebrals L_4	√		√			√			
L_5		√		√			√		
S_1		√		√			√		
Left									
Quadriceps Femoral	√		√			√			
Tibialis Ant. (Com. Per.)		√		√			√		
Ext. Hall. Long. (Com. Per.)		√		√			√		
Gastroc Medial (Tib. Pos.)		√		√			√		
Gastroc Lateral (Tib. Pos.)		√		√			√		

Muscles	Motor Units								
				|Amplitude|			Duration |		
Lower Extremities **Left**	Triphasics	Poliphasics Increased	WNL	↑	↓	WNL	↑	↓	None evoke
Paravertebrals L_4	√		√			√			
L_5		√		√			√		
S_1		√		√			√		
Others									
Paravertebrals									
C_5, C_6, C_7 P.		√		√			√		

Muscles	Interference Pattern				
Upper Extremities **Right**	Complete	Incomplete	Poor	Single unit	Sudden and low amplitude
Deltoid C_5		√			
Biceps C_{5-6}		√			
Brachioradialis C_{5-6}		√			
Triceps C_7		√			
Abd. Pollicis brevis C_8 T_1	√				
Abd. digiti quinti C_8 T_1	√				
Left					
Deltoid (Axillar)		√			
Biceps (Musculocut.)		√			
Brachioradialis (Radial)		√			
Triceps (Radial)		√			
Abd. Pollicis brevis (Med.)	√				
Abd. digiti quinti (Ulnar)	√				
Lower Extremities **Right**					
Quadriceps L_{2-4}	√				

Muscles	Interference Pattern				
Lower Extremities **Right**	Complete	Incomplete	Poor	Single unit	Sudden and low amplitude
Tibialis Ant. L_{4-5}		√			
Ext. Hall. Longus L_5S_1		√			
Gastroc (Medial) S_{1-2}		√			
Gastroc (Lateral) L_5S_1		√			
Paravertebrals L_4	√				
L_5		√			
S_1		√			
Left					
Quadriceps Femoral	√				
Tibialis Ant. (Com. Per.)		√			
Ext. Hall. Long. (Com. Per.)		√			
Gastroc Medial (Tib. Pos.)		√			
Gastroc Lateral (Tib. Pos.)		√			
Paravertebrals L_4	√				
L_5		√			
S_1		√			

Muscles	Interference Pattern				
Lower Extremities **Left**	Complete	Incomplete	Poor	Single unit	Sudden and low amplitude
Others					
Paravertebrals					
C_5, C_6, C_7 P.		√			

Remarks

NERVE CONDUCTIONS STUDIES
RIGHT

Nerve Tested	Conduction Velocity (Meters/ Second)	Latency (Mili Second)	Amplitude Micro-Volts
Facial			
Median			
Erb's to elbow			
Erb's to wrist	51	4.8	6,500
Sensory delay			
Ulnar			
Erb's to elbow	36	15.9	5,000
across elbow	63	8.0	10,500
Elbow to wrist	61	2.9	10,500
Sensory delay			
Radial			
Common Peroneal	47	4.7	3,000
Femoral			
Posterior Tibial	49	4.8	5,000
Sural 14cm delay	45	3.5	25
H Reflex		32.5	
F wave Ulnar Nerve		34.7	

NERVE CONDUCTIONS STUDIES

LEFT

Nerve Tested	Conduction Velocity (Meters/ Second)	Latency (Mili Second)	Amplitude Micro-Volts
Facial			
Median			
Erb's to elbow			
Erb's to wrist	54	4.4	9,000
Sensory delay			
Ulnar			
Erb's to elbow	39	15.6	6,000
across elbow	66	7.9	11,000
Elbow to wrist	64	3.0	11,000
Sensory delay			
Radial			
Common Peroneal	46	4.9	3,500
Femoral			
Posterior Tibial	47	4.6	6,000
Sural 14cm delay	46	3.4	25
H Reflex		32.3	
F wave Ulnar Nerve		34.3	

Other NCV Tsest:

F wave latencies of Common Peronial nerves

Right Side = 34.9 msec

Left Side = 34.6 msec

Assessment:

EMG:

1. Positive waves (+2), Fibrillation Potential (+2) increased proportion of polyphasic potentials, incomplete summation pattern at C_5, C_6, C_7, paraspinal muscles and corresponding myotomes at both upper extremities is compatible with Bilateral C_5, C_6, C_7 Radiculopathy.

2. Positive waves (+3), Fibrillation potential (+2) with incomplete summation pattern increased proportion of polyphasic potential at L_5, S_1 paraspinal muscles and corresponding myotomes at both lower extremities is compatible with Bilateral L_5, S_1 Radiculopathy.

NCV:

1. Increased distal motor latencies of both median nerves is compatible with Bilateral Carpal Tunnel Syndrome.

2. Decreased ulnar nerve motor conduction velocities across supraclavicular segment is compatible with Bilateral Thoracic Outlet Syndrome.

3. Increased F wave latencies of both ulnar nerves is compatible with Bilateral Thoracic Outlet Syndrome.

4. Increased F wave latencies of both common peroneal nerves is compatible with Bilateral L_5 Radiculopathy.

5. Increased H Reflex latencies is compatible with Bilateral S_1 Radiculopathy.

Diagnostic Impression

1. Bilateral C_5, C_6, C_7 Radiculopathy.
2. Bilateral L_5, S_1 Radiculopathy.
3. Bilateral Carpal Tunnel Syndrome.
4. Bilateral Thoracic Outlet Syndrome.

Recommendations:

1. Absolute rest.
2. Intensive Program of physical therapy.
3. Hand surgeon evaluation.
4. Neurological evaluation.

/s/ Florencio Lao Sam
Lic. 6959

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ADVANCE IMAGING INTERVENTIONAL CENTER
NON INVASIVE PERIPHERAL VASCULAR DIVISION

Name: Cintrón-Parrilla, Kenia Date: 10/02/97
Address: Naguabo PR 874-0025 Age: 41 years
Referring Physician: Dr. Tomas Hernandez Sex: F

NON- INVASIVE VASCULAR DIVISION
ARTERIAL DOPPLER AND DUPLEX
EVALUATIONOF UPPER EXTREMITIES

History: This is a 41y/o female who presents with bilateral carpal tunnel and claudication which is worse on the right than on the left, r/o thoracic outlet syndrome.

Technique:

Non- invasive testing of upper arterial system from the subclavian artery to the digits was performed. Pulse volume recordings, Doppler waveform analysis, and PPG's of the arms in different maneuvers to elicit thoracic outlet syndrome were obtained. The arterial system was also examined by color flow duplex.

Findings:

Right Upper Extremity

There are normal Doppler signals and PPG waveform analysis of the right upper extremity without evidence or suggestion of any significant stenosis. The different arm maneuvers show symmetric pulse amplitude.

The color flow duplex examination shows no evidence of hemodynamically significant stenosis or aneurysims.

There are triphasic waveforms at all levels.

There is evidence of interruption of flow at the level of the subclavian and brachial artery during the hyperabduction maneuver which is consistent with compression at the level of the subclavian artery.

The subclavian vein appears open.

Left Upper Extremity

There are normal Doppler signals and PPG waveform analysis of the left upper extremity without evidence or suggestion of any significant stenosis. The different arm maneuvers show symmetric pulse amplitude.

The color flow duplex examination shows no evidence of hemodynamically significant stenosis or aneurysims.

There are triphasic waveforms at all levels.

There is evidence of interruption of flow at the level of the subclavian and brachial artery during the hyperabduction maneuver which is consistent with compression at the level of the subclavian artery.

The subclavian vein appears open.

IMPRESSION

1. Compression of the subclavian arteries bilaterally producing flow interruption to the artery and distally.
2. No evidence of significant stenosis or occlusion by duplex. There are normal triphasic waveforms at all levels.

/s/ Delfin Bernal Echeandia
DELFIN BERNAL-ECHEANDIA, MD
Radiologist

/s/ L. Larregoity
DBE/elc
DD: 10/06/97 DT: 10/06/97

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Ave. Aguas Buenas – Bloque 10 Núm. 2, Santa Rosa,
Bayamón, Puerto Rico Tels. 780-4292 / 740-4290
Dr. José Eddie Bisbal

File No. 14252

Name Kenia M. Cintrón Parrilla
Address Tel.
Age 42 Sex F Plan SSS Status
Nearest Relative Referred by
Admitted 3/23/98 Discharged
Diagnosis
B.P. Pulse Weight
Precaution

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42 y/o female pte with hx of severe progressive cervical + upper back pain since last March-April as result of her duties, with radiation to both upper extremities, more on RT side.

Severe frequent headaches.

P.H. Ess neg

Allergies: Cefalosporin, Percocet, Wygesic

PE: Neck bilateral trapezius spasm + pain with limited + painful ROW

Extrem: Tinel's + Phalen's POS
Adson's POS
Muscle strength: G on upper
ROM determination: Full

ELECTROMYOGRAPHY EXAMINATION

Date

Patient Referring Physician

Address Age Status

Problem:

UPPER EXTREMITIES

Muscle	Roots	Innervation	Insertional Activity	Spontaneous Fibrillation
Rt.Trapezius	C_2, C_3, C_4	S. Accesory N.	Normal	None
Rt. Deltoid			Increased	Positive waves
Rt. Biceps brachi	C_5, C_6	Axiliary N.	↓	↓
	C_5, C_6	Musculo-cutaneous N.		
Rt. Triceps	C_6, C_7	Radial N.		
Rt.Brachio-radialis	C_5, C_6	Radial N.	Increased ↓	Positive Waves
Rt.Pronotor Teres	C_6, C_7	Madian N.		
Rt. 1st Dorsal Interosel	C_8, T_1	Ulnar N.	Normal	None
Rt.Opponens Pollicis	C_8, T_1	Median N.	↓	↓
Rt.Abductor Digiti quinti	C_8, T_1	Ulnar N.		
Rt. C_2, C_3, C_4, C_5, C_6, C_7, C_8, T_1 Paraspinal Muscles				

UPPER EXTREMITIES

Muscle	Roots	Innervation	Fasciculation	Motor Unit Action Potential
Rt.Trapezius	C_2, C_3, C_4	S.Accesory N.	None	Biphasic + polyphasic potentials progressing to mixed sum pattern at RT + LT common C_{5-6} para-muscles ↓
Rt. Deltoid	C_5, C_6	Axiliary N	↓	
Rt. Biceps brachi	C_5, C_6	Musculo-cutaneous N.		
Rt. Triceps	C_6, C_7	Radial N.		
Rt.Brachio-radialis	C_5, C_6	Radial N.		
Rt.Pronotor Teres	C_6, C_7	Madian N.		
Rt. 1st Dorsal Interosel	C_8, T_1	Ulnar N.		
Rt.Opponens Pollicis	C_8, T_1	Median N.		
Rt.Abductor Digiti quinti	C_8, T_1	Ulnar N.		
Rt. C_2, C_3, C_4, C_5, C_6, C_7, C_8, T_1 Paraspinal Muscles				

UPPER EXTREMITIES

Muscle	Roots	Innervation	Insertional Activity	Spontaneous Fibrillation
Lt.Trapezius	C_2, C_3, C_4	S. Accesory N.	Normal	None
Lt. Deltoid	C_5, C_6	Axiliary N.	Increased ↓	Positive waves ↓
Lt. Biceps brachi	C_5, C_6	Musculo-cutaneous N.		
Lt. Triceps	C_6, C_7	Radial N.		
Lt.Brachio-radialis	C_5, C_6	Radial N.	Increased ↓	Positive Waves
Lt.Pronotor Teres	C_6, C_7	Madian N.		
Lt. 1st Dorsal Interosel	C_8, T_1	Ulnar N.	Normal	None
Lt.Opponens Pollicis	C_8,-T_1	Median N.	↓	↓
Lt.Abductor Digiti quinti	C_8, T_1	Ulnar N.		
Lt. C_2, C_3, C_4, C_5, C_6, C_7, C_8, T_1 Paraspinal Muscles				

UPPER EXTREMITIES

Muscle	Roots	Innervation	Fasciculation	Motor Unit Action Potential
Lt.Trapezius	C_2, C_3, C_4	S.Accesory N.	None	Biphasic + polyphasic potentials progressing to mixed sum pattern at RT + LT common C_{5-6} para-muscles ↓
Lt. Deltoid	C_5, C_6	Axiliary N	↓	
Lt. Biceps brachi	C_5, C_6	Musculo-cutaneous N.		
Lt. Triceps	C_6, C_7	Radial N.		
Lt.Brachio-radialis	C_5, C_6	Radial N.		
Lt.Pronotor Teres	C_6, C_7	Madian N.		
Lt. 1st Dorsal Interosel	C_8, T_1	Ulnar N.		
Lt.Opponens Pollicis	C_8, T_1	Median N.		
Lt.Abductor Digiti quinti	C_8, T_1	Ulnar N.		
Lt. C_2, C_3, C_4, C_5, C_6, C_7, C_8, T_1 Paraspinal Muscles				

Other: Occ Positive waves seen in RT + LT paraspinals

No positive waves seen in RT + LT Craneals

No positive waves seen in RT + LT Thoracic Spinals

NERV CONDUCTION VELOCITIES

	Erbs to Elbow	Elbow to Wrist	Erbs to Wrist	Distal Delay	Sen-sory
RT. Median N.	_ m/sec	50 m/sec	_ m/sec	4.1.	4.2
LT. Ulnar N.	_ m/sec	51 m/sec	_ m/sec	2.2.	2.0.
RT. Median N.	_ m/sec	54 m/sec	_ m/sec	4.0.	4.1.
LT. Ulnar N.	_ m/sec	49 m/sec	_ m/sec	2.0.	1.8.
F waves	LT.	28.5.	RT.	28.9.	
		26.0		26.0	

Others:

Radial		Motor	Sens
RT	56m/s	2.7.	2.4
LT	58m/s	2.9.	2.5.

DIAGNOSTIC IMPRESSION:

(1) Findings in EMG suggest Bilateral C_{5-6} roots involvement

(2) Findings in NCV shows bilateral Carpal Tunnel Synd

(3) Findings in F waves suggest Bilateral Thoracic Outlet Synd

/s/ Jose E. Bisbal, M.D.

CENTRO DE TERAPIA FÍSICA SANTA ROSA

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Dr. José Eddie Bisbal

File No. 14252

Name Kenia M. Cintrón Parrilla

Address			Tel.
Age 42	Sex F	Plan SSS	Status
Nearest Relative		Referred by	
Admitted 3/25/98		Discharged	
Diagnosis			
B.P.		Pulse	Weight
Precaution			

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42 y/o female pte with hx of severe plow back pain with onset almost 1 year ago with radiation, weakness, cramps, numbness of both legs. Not relieved by rest.

Severe frequent headaches.

PE:	SLR	Lassegue	Patrick	KJ	AJ	Sens	Strengh	ROM
	RT 40°	POS	Neg	++	++	↓L5	G Ext Hall	Full
	RL 40°	POS	Neg	++	++	↓L5	G Ext Hall	Full

Bad: Sacral L-S Spasm.

ELECTROMYOGRAPHY EXAMINATION

Date

Patient Referring Physician

Address Age Status

Problem:

LOWER EXTREMITIES

Muscle	Roots	Innervation	Insertional Activity	Spontaneous Fibrillation
Rt. Quadriceps Fem.	L_2, L_3, L_4	Femoral N.	Normal	None
Rt. Tibialis Ant.	L_4, L_5, S_1	Deep peroneal N.	Increased ↓	Occ. Positive wave
Rt. Peroneus Brevis	L_4, L_5, S_1	Superficial peroneal N.		
Rt. Ext. Dig. Brevis	L_4, L_5, S_1	Deep peroneal N.	↓	↓
Rt. Ext. Hall Long	L_4, L_5, S_1	Deep peroneal N.		
Rt. 1st Dorsal Interosel	L_5, S_1, S_2	Tibial N.		
Rt. Medial Gastroc-nemius	L_5, S_1, S_2	Tibial N.		
Rt. L_3, L_4, L_5, S_1 Paraspinal Muscles				

LOWER EXTREMITIES

Muscle	Roots	Innervation	Fasciculation	Motor Unit Action Potential
Rt. Quadriceps Fem.	L_2, L_3, L_4	Femoral N.	None	Biphasic + poly-phasic potentials progressing to mixed sum pattern on RT + LT common L_5-S_1 para-muscles
Rt. Tibialis Ant.	L_4, L_5, S_1	Deep peroneal N.	↓	
Rt. Peroneus Brevis	L_4, L_5, S_1	Superficial peroneal N.		
Rt. Ext.Dig. Brevis	L_4, L_5, S_1	Deep peroneal N.	↓	↓
Rt. Ext. Hall Long	L_4, L_5, S_1	Deep peroneal N.		
Rt. 1st Dorsal Interosel	L_5, S_1, S_2	Tibial N.		
Rt. Medial Gastroc-nemius	L_5, S_1, S_2	Tibial N.		
Rt. L_3, L_4, L_5, S_1 Paraspinal Muscles				

LOWER EXTREMITIES

Muscle	Roots	Innervation	Insertional Activity	Spontaneous Fibrillation
Lt. Quadriceps Fem.	L_2, L_3, L_4	Femoral N.	Normal	None
Lt. Tibialis Ant.	L_4, L_5, S_1	Deep peroneal N.	Increased ↓	Occ. positive wave
Lt. Peroneus Brevis	L_4, L_5, S_1	Superficial peroneal N.		
Lt. Ext.Dig. Brevis	L_4, L_5, S_1	Deep peroneal N.	↓	↓
Lt. Ext. Hall Long	L_4, L_5, S_1	Deep peroneal N.		
Lt. 1st Dorsal Interosel	L_5, S_1, S_2	Tibial N.		
Lt. Medial Gastroc-nemius	L_5, S_1, S_2	Tibial N.		
Lt. L_3, L_4, L_5, S_1 Paraspinal Muscles				

LOWER EXTREMITIES

Muscle	Roots	Innervation	Fasciculation	Motor Unit Action Potential
Lt. Quadriceps Fem.	L_2, L_3, L_4	Femoral N.	None	Biphasic + polyphasic potentials progressing to mixed sum pattern on RT +LT common L_5-S_1 para-muscles
Lt. Tibialis Ant.	L_4, L_5, S_1	Deep peroneal N.	↓	
Lt. Peroneus Brevis	L_4, L_5, S_1	Superficial peroneal N.		
Lt. Ext.Dig. Brevis	L_4, L_5, S_1	Deep peroneal N.	↓	↓
Lt. Ext. Hall Long	L_4, L_5, S_1	Deep peroneal N.		
Lt. 1st Dorsal Interosel	L_5, S_1 S_2	Tibial N.		
Lt. Medial Gastroc-nemius	L_5, S_1 S_2	Tibial N.		
Lt. L_3, L_4, L_5, S_1 Paraspinal Muscles				

Others: Occ postive waves seen on RT + LT L_5-S_1, paraspinals.

No Positive waves seen on RT or LT Craneal

No positive waves seen on RT Thoracic spinal.

NERV CONDUCTION VELOCITIES

	RT Lower Extremities		LT Lower Extremities	
Peroneal N.	53	m/sec	54	m/sec
Posterior Tibial N.	56	m/sec	52	m/sec
Sucral N.	3.9	m/sec	4.0	m/sec
Medial Plantar N.	4.1	m/sec	3.7	m/sec
Lateral Plantar N.	4.0	m/sec	4.1	m/sec
Medial Dorsal Cutaneous	__	m/sec	___	m/sec

H Reflex	27.2.	27.0.
Normal =	26.5.	

Comments:

F waves	RT	LT
Peroneal	24.3. ,	23.9.
Post Tibial	26.5. ,	23.1.

DIAGNOSTIC IMPRESSION:

(1) Findings in EMG suggest Bilateral L_5-S_1 roots involvement.

/s/ Jose E. Bisbal, M.D.

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ADVANCE IMAGING INTERVENTIONAL CENTER
NON INVASIVE PERIPHERAL VASCULAR DIVISION

Name: Cintrón-Parrilla, Kenia Date: 03/24/98
Address: Naguabo PR 874-0025 Age: 42 years
Referring Physician: Dr. Hernandez Sex: F

NON- INVASIVE VASCULAR DIVISION
ARTERIAL DOPPLER AND DUPLEX
EVALUATION OF UPPER EXTREMITIES

History: This is a 42 y/o female who presents with history of thoracic outlet syndrome during the hyperabduction maneuver 10/02/97 who presents progressive numbness and swelling of the arms. .

Technique:

Non- invasive testing of upper arterial system from the subclavian artery to the digits was performed. Pulse volume recordings, Doppler waveform analysis, and PPG's of the arms in different maneuvers to elicit thoracic outlet syndrome were obtained.

Right Upper Extremity

There are normal Doppler signals and PPG waveform analysis of the right upper extremity without evidence or suggestion of any significant stenosis. The PPG pulses were interrupted during the hyperabduction maneuver.

The continuous wave doppler waveforms on all different maneuvers demonstrate decrease flow within the subclavian and brachial arteries during the hyperabduction

maneuver in keeping with compression at the level of the subclavian artery.

Left Upper Extremity

There are normal Doppler signals and PPG waveform analysis of the left upper extremity without evidence or suggestion of any significant stenosis. The PPG pulses were interrupted during the hyperabduction maneuver.

The continuous wave doppler waveforms on all different maneuvers demonstrate decrease flow within the subclavian and brachial arteries during the hyperabduction maneuver in keeping with compression at the level of the subclavian artery.

IMPRESSION

6. Compression of the subclavian arteries bilaterally during the hyperabduction maneuver producing decrease flow distally.
7. No evidence of significant stenosis or occlusion by Doppler

/s/ Delfin Bernal Echeandia
DELFIN BERNAL-ECHEANDIA, MD
Radiologist

/s/ L. Larregoity
DBE/elc-DD: 03/25/98 – DT: 03/25/98

App. 220

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HOJA DE REFERIDO
(REFFERAL SHEET)

Kenia M Cintrón Parrilla
Bo. Daguao
PO Box 232
Naguabo, PR
97 34 04428 9

000	04	Naguabo
00 May 97	17 Feb 56	F
584-66-4691	54994	

Número de Record Hospital Industrial: **913-58-52**
(Industrial Hospital Record Number:)

Referido a: CFSE Dispensario de Humacao
(Referred to: SIFC Clinic of Humacao)

Especialidad Solicitada (**Requested Specialty**): **MI**

Status Actual de Caso: Descanso
(Present Case Status: Rest)

Lugar de Nacimiento (**Birth Place**): **Humacao**

Nombre del Patrono y Direccion: **Lilly del Caribe**
(Employer's name and address:)

Nombre del Padre (**Father's Name**) **Lauro**
Nombre de la Madre (**Mother's Name**): **Kenia**

NEUROLOGY EVALUATION

Patient seen today April 15, 1998, by Dra. Hernandez, neurologist, who evaluated and recommended as follow:

P: Bilat C.T.S. L-S Strain
L_5-S radic Hand Strain

EMG- Showed L_5 radic and Bilat C.T.S.

3HPP- 2-137 3rd 76 abrupt low

Patient brought results of private labs

Doppler of UE- decrease flow with hyperabduction

Evalaution by Dr. Bisbal in Bayamón

Cervial MRI- spasm, gen spurs with dis dessication at multiple levels C3-C7

Bulging disc C4-5 compressing dural sac and bulging C5-6. No canal stenosis or cord compression.

S: She continues claiming cervical and lumbar pain. Difficulty walking after being seated for some time
Also that objects fall from her hand.

O: No thenar or hypothenar atrophy warm hand, look hyperemia hand grip 4/5 and thumb opposition 3.5/s tested bilat and tinel bilateral

Ass: Bilateral C.T.S.-Related
Hand Strain n-Related

P: D/C from neurology clinic
Back to referral source

Dia Mes Año
(Day Month Year)
23 7 98

Nombre del médico
(Physician's Name)
Dra. Hernández

Firma (**Signature**)
/s/ Dra. Hernández

Especialidad (**Specialty**)
neurologist/ef

CONDADO X RAY
F.S.E

Name: Cintron Kenia
Case#: N\A 97-34-04428-9
Date: 10/01/97

CERVICAL SPINE C.T. SCAN:

Technique:

Multiple 5mm sections were obtained from C1 to C7 with high resolution C.T. Scanner. Including bone windows.

Findings:

There is evidence of normal C1-C2 and odontoid articular relations. There is normal general neural bone canal, neural roots and neural cord.

There is narrowing of the emerging recess, see image no 31 at the right side at C6-C7 disc level. Please correlate clinically.

No distinct extradural, intradural or intramedullary lesions recognized.

IMPRESSIONS:

SEE BODY REPORT

RECOMMENDATIONS: NEUROLOGIC CLINIC CORRELATION AND MRI ACCORDING TO CLINIC.

Jose E. Gonzalez-Camacho, MD
Radiologist

JEGC/gm

INTITUTO CENTRAL DE DIAGNOSTICO
Hospital Oncologico
(787) 281-7474

Patient's Name: Cintrón Parrilla, Kenia
Patient's ID: 584-66-4691 Exam Date: March 17, 1998
Ref. Physician: Dr. Hernandez
Report Date: March 28, 1998
Hospital: 97-34-4428-9

M.R.I. OF THE CERVICAL SPINE WITHOUT CONTRAST:

Patient is 42 y/o female with neck pain and numbness.

There are no previous studies available for correlation.

There is straitening of the normal curvature of the spine. Generalized osteophyte formation is seen. Disc desiccation is seen at multiple levels including C3-4, C4-5, C5-6, and C6-7.

Mild posterior disc bulge is seen at C4-5 level compressing the dural sac with no evidence of indentation of the cord or canal stenosis.

Asymmetric posterior disc bulge with lateralization toward the left is seen at C5-6 level. There is no evidence of canal stenosis or cord compression.

The remaining levels shows significant disc bulge or canal stenosis.

/s/ Oscar Zavala
Oscar Zavala, MD

ESTADO LIBRE ASOCIADO DE PUERTO RICO
CORPORACIÓN DEL
FONDO DEL SEGURO DEL ESTADO
HOSPITAL INDUSTRIAL

HOJA DE REFERIDO
(REFFERAL SHEET)

Kenia M Cintrón Parrilla
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PO Box 232
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00 May 97	17 Feb 56	F
584-66-4691	54994	

Número de Record Hospital Industrial: **913-58-52**
(Industrial Hospital Record Number:)

Referido a: CFSE Dispensario de Humacao
(Referred to: SIFC Clinic of Humacao)

Especialidad Solicitada(**Requested Specialty**): **MI**

Status Actual de Caso: Descanso
(Present Case Status: Rest)

Lugar de Nacimiento (**Birth Place**): **Humacao**

Nombre del Patrono y Direccion: **Lilly del Caribe**
(Employer's name and address:)

Nombre del Padre **(Father's Name)**: **Lauro**
Nombre de la Madre (**Mother's Name**): **Kenia**

THORACIC SURGEON EVALUATION

July 23 98 Dr. Menendez Thoracic Surgeon

Female patient 42 years old with no history of any major illness who since 1997 began with bilateral shoulder pain back.

P.E.

No supraclavicular bruits no pulsate manes on supraclavicular areas.

Painful tender to palpation both trapezius muscles.

Impression:

No clinical evidence of neurovascular compression at the thoracic outlet which mandates any surgical intervention.

R/O Trapezius myositis

Recommendation

Cont with medical management

Severe reactive depression Related

Needs psychiatric evaluation

Dia Mes Año
(Day Month Year)
23 7 98

Nombre del médico
(Physician's Name)
Dr. A. Menendez

Firma (**Signature**)
/s/A. Menendez

Especialidad (**Specialty**)
Thoracic Surgeon ard

Estado Libre Asociado de Puerto rico
CORPORACIÓN DEL
FONDO DEL SEGURO DEL ESTADO
Humacao, Puerto Rico

DECISIÓN DE ADMINISTRADOR

Lesionado
Nombre y Dirección
Kenia M. Cintron Parrilla
PO Box 232
Naguabo, PR

Patrono	Caso Numero
Nombre y dirección	Año Fiscal Disp. Numero
Lilly del Caribe Inc.	97 34 4428 9
	ف Subrogación ف Menor*

Fecha del Accidente: 1 mayo 1997 Jornal Diario: $99.99
Dias de la Semana: 5 Jornal Semanal: $65.00
Sitio Accidente: Carolina
Numero Seguro Social: 584-66-4691 Clave Seguro: 2

Descripción del Accidente

Allega la lesionada que debido a la labor que realiza desarrollo dolor en el cuello, espalda, cintura, ambas manos, brazos, y piernas

Lesiones:

Strain Cervical IPP	Bilateral CTS IPP
Strain Lumbo Sacral IPP	Bilateral Parestesis IPP
Strain Dorsal AS	L5-S1 Radiculopatía

Alta Definitiva Fecha: 25 agosto 1998

Medico Informante: Dr. Pedro F. Matias/
Dr. Rolando Dones/gic

Incapacidad resultante:
5%-F.F.G. Strain Cervical
5%-F.F.G. Strain L/S
10%-F.F.G. Radiculopatía L5-S1
10%-F.F.G. pérdida de la mano derecha por la muñeca
10%-F.F.G. pérdida de la mano izquierda por la muñeca

Estudiado el expediente médico del caso, el Administrador de la corporación del Fondo del Seguro del Estado resuelve que el accidente es uno de los protegidos por la ley de compensaciones por accidente del Trabajo, Ley Núm. 45 aprobada el 18 de abril de 1935, según has sido posteriormente enmendada. Habiéndose reconocido al lesionado la incapacidad parcial permanente antes expresada, el Administrador resuelve que el mismo tiene derecho a recibir en la forma que determina la ley una compensación adicional equivalente a 66 2/3 % a base del jornal diario que ganaba el día del accidente.

De acuerdo con el expediente de este caso, deberá pagársele una compensación computada a base del jornal semanal arriba indicado durante una periodo de 128 semanas, la que asciende a la suma de $ 8, 320.00 **

De esta cantidad se le descontará por concepto de

A. Dietas pagadas en exceso ف Este accidente
ف Otro accidente
26 de agosto 1998 al 16 oct 1998 $ 494.00

B. Compensación otorgada y/o pagada por incapacidad

1. en este Accidente $ _____
2. en Accidente anterior Núm. Caso _____ $ _____

C. Otros Descuentos $ _____

Total a descontarse $ 494.00

Una vez realizados los descuentos antes mencionados, si los hubiere, el lesionado recibirá la cantidad de $ 7, 826.00

En los casos de incapacidad inicial, si esta cantidad es de $1,000.00 o menos en los casos de accidentes o enfermedad ocurridos antes de junio 30 de 1989 ó de $1,500.00 ó menos en los casos de accidentes por enfermedad ocurridos a partir de julio 1ro de 1989, se le pagará en total de una sola vez Cuando la cantidad es mayor, se le pagará un pago inicial como anticipo de $1,000.00 ó de $1,500.00 (según lo antes especificado) y el balance le será pagado en plazos de $150.00

CERTIFICO: QUE LOS COMPUTOS ESTAN CORRECTOS Y QUE PROCEDE EL PAGO POR LA CANTIDAD ARRIBA INDICADA.

24 de noviembre de 1998 /s/ Carmen L. Maldonado
Carmen L. Maldonado Cintrón
Jefa Comps

Fecha Jefe, División de Reclamaciones
o su Representante Autorizado

* PARA USO DEL MENOR ESTE PAGO SE HARÁ A TRAVÉS DE

_____

CERTIFICO: QUE ESTE PAGO ESTA A TONO CON LA LEY DE COMPENSACIONES POR ACCIDENTES DEL TRABAJO

Dado en Humacao, Puerto Rico a _____

Oscar L. Ramos Melendez
Administrador

Director Regional

Por: /s/ Hiram Olmeda Guevara
HIRAM OLMEDA GUEVARA
Director Regional o su
Representante Autorizado

Cargo oficial

NOTIFICACIÓN

CERTIFICO que la presente es copia fiel y exacta de su original. Que he notificado al lesionado y al patrono a las direcciones arriba indicadas y al Lcdo. Juan A. Hernández a su dirección conocida en PO Box 367059 San Juan PR 00936

05 MAR 1999

/s/ Ana Sanchez Ortega
ANA SANCHEZ ORTEGA
Secretario

Fecha de La Notificación

** ESTA CANTIDAD NUNCA SERA MAYOR DE $12,000.00 SEGÚN LO ESTABLECE LA LEY.

ADVERTENCIA: De no estar conforme con la decisión , el lesionado tiene derecho a apelar ante la honorable Comisión Industrial de Puerto Rico dentro de un término de treinta (30) días de la fecha de esta notificación.

Los honorarios que fije la Comisión Industrial serán los únicos que podrá recibir el abogado del apelante por recibir sus servicios.

ORIENTACIÓN AL LESIONADO AL DORSO

ABOGADO

CERTIFIED TRANSLATION

Commonwealth of Puerto Rico
STATE INSURANCE FUND CORPORATION
Humacao, Puerto Rico

ADMINISTRATOR'S DECISION

Injured Party
Name and Address
Kenia M. Cintrón Parrilla
PO Box 232
Naguabo, PR

Employer	Case Number		
Name and Address	Fiscal Year		Disp. Number
Lilly del Caribe, Inc.	97	34	4428 9
	ف Subrogation		ف Minor*

Date of the Accident: May 1, 1997 Daily Wages: $99.99
Days of the Week: 5 WeeklyWages: $65.00
Place of the Accident: Carolina
Social Security No. 584-66-4691 Insurance Code: 2

Description of the Accident:
The injured party alleges that due to the work she performs, she developed a pain in her neck, back, waist, both hands, arms and legs.

Injuries:

IPP Cervical Strain	IPP Bilateral CTS
IPP Lumbo Sacral Strain	IPP Bilateral Paresthesis
AS Dorsal Strain	L5-S1 Radiculopathy

Definite Discharge Date: August 25, 1998

Reporting Physician: Dr. Pedro F. Matías
Dr. Rolando Dones/gic

Resulting Disability:

5% - F.F.G. Cervical Strain

5% - F.F.G. L/S Strain

10% - F.F.G. L5-S1 Raduculopathy

10% - F.F.G. loss of right hand at wrist

10% - F.F.G. loss of left hand at wrist

After having studied the medical record of the case, the Administrator of the State Insurance Fund decides that the accident is one that is protected by the Work-Related Accidents Compensation Act, Public Law No. 45, approved on April 18, 1935, as subsequently amended. The injured party's aforementioned permanent partial disability having been acknowledged, the Administrator decides that the latter is entitled to receive, as determined by law, an additional compensation equivalent to 66 2/3% , based on the daily wages that she earned on the day of the accident.

According to the record of this case, she must be paid a compensation computed on the basis of the aforementioned weekly wages during a period of 128 weeks, which amounts to the sum of $8,320.00**

From this amount deductions shall be made for:

A. Excess per diem paid ف This accident
ف Another accident
August 26, 1998 $ 494.00
to October 16, 1998

B. Disability compensation granted and/or paid
1. In this accident $_____

2. In previous accident Case No._____ $_____

C. Other deductions $_____

Total amount to be deducted $ 494.00

Once the aforementioned deductions, if any, have been made, the injured party shall receive the amount of $7,826.00.

In cases of initial disability, if this amount is $1,000.00 or less in cases of accidents or illness occurred before June 30, 1989, or of $1,500.00 or less in cases of accidents due to illness occurred after July 1, 1989, the total payment shall be made in one lump sum. When the amount is greater, an initial advance payment of $1,000.00 or $1,500.00 (as previously specified) shall be made, and the balance shall be paid in installments of $150.00.

I CERTIFY: THAT THE COMPUTATIONS ARE CORRECT AND THE PAYMENT FOR THE AMOUNT INDICATED ABOVE IS IN ORDER.

November 24, 1998 /s/ Carmen L. Maldonado

Carmen Maldonado Cintrón

Comp. Director

Date Director, Claims Division or his Authorized Representative

* FOR MANOR'S USE THIS PAYMENT SHALL BE MADE THROUGH _____

I CERTIFY: THAT THIS PAYMENT IS IN ACCORDANCE WITH THE WORK-RELATED ACCIDENTS COMPENSATION ACT.

Given in Humacao, Puerto Rico on_____.

Oscar L. Ramos Meléndez

Administrator

Regional Director

By:/s/ Hiram Olmeda Guevara
HIRAM OLMEDA GUEVARA

Official Position

Regional Director or his
Authorized Representative

NOTIFICATION

I CERTIFY that this is a true and exact copy of the original. That I have notified the injured party and the employer at the addresses indicated above and Atty. Juan A. Hernández at his known address at PO Box 367059, San Juan, PR 00936.

March 5, 1999

/s/ Ana Sánchez Ortega
ANA SANCHEZ ORTEGA

Date of Notification

Secretary

**THIS AMOUNT SHALL NEVER BE GREATER THAN $12,000.00, AS ESTABLISHED BY LAW.

WARNING: If the injured party does not agree with the decision, he/she has the right to appeal before the honorable Puerto Rico Industrial Commission within a period of thirty (30) days from the date of this notification.

The attorney fees that the Industrial Commission sets shall be the only ones that the appellant's attorney may receive for his services.

ORIENTATION TO THE INJURED PARTY ON THE BACK.

ATTORNEY

United States District Court
For the District of Puerto Rico
-CERTIFIED-
To be a correct translation prepared by:
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Estado Libre Asociado de Puerto Rico
CORPORACIÓN DEL
FONDO DEL SEGURO DEL ESTADO
Humacao, Puerto Rico

DECISIÓN DE ADMINISTRADOR

Lesionado
Nombre y Dirección
Kenia M. Cintron Parrilla
PO Box 232
Naguabo, PR

Patrono
Nombre y dirección
Lilly del Caribe Inc.

Caso Número
Año Fiscal Disp. Numero
97 2 34 2 4428 9
ف Subrogación ف Menor*

Fecha del Accidente: 1 mayo 1997 Jornal Diario: $99.99
Dias de la Semana: 5 Jornal Semanal: $65.00
Sitio Accidente: Carolina
Numero Seguro Social: 584-66-4691 Clave Seguro: 2

Descripción del Accidente
Allega la lesionada que debido a la labor que realiza desarrollo dolor en el cuello, espalda, cintura, ambas manos, brazos, y piernas. Posteriormente desarrollo condición emocional

Lesiones:
Condición Emocional, Rel

Alta Definitiva Fecha: 3 feb 1999
Medico Informante: Dr. Pedro F. Matias/

Dr. Rolando Dones/gic

Incapacidad resultante:

5%-F.F.G. condición emocional, independiente a lo otorgado en este caso.

Estudiado el expediente médico del caso, el Administrador de la corporación del Fondo del Seguro del Estado resuelve que el accidente es uno de los protegidos por la ley de compensaciones por accidente del Trabajo, Ley Núm. 45 aprobada el 18 de abril de 1935, según has sido posteriormente enmendada. Habiéndose reconocido al lesionado la incapacidad parcial permanente antes expresada, el Administrador resuelve que el mismo tiene derecho a recibir en la forma que determina la ley una compensación adicional equivalente a 66 2/3 % a base del jornal diario que ganaba el día del accidente.

De acuerdo con el expediente de este caso, deberá pagársele una compensación computada a base del jornal semanal arriba indicado durante una periodo de 22 1/2 semanas, la que asciende a la suma de $ 1, 462.50 **

De esta cantidad se le descontará por concepto de

A. Dietas pagadas en exceso ف Este accidente
ف Otro accidente $ _____

B. Compensación otorgada y/o pagada por incapacidad
1. en este Accidente $ _____
2. en Accidente anterior Núm. Caso _____ $ _____

D. Otros Descuentos $ _____

Total a descontarse $ _____

Una vez realizados los descuentos antes mencionados, si los hubiere, l lesionado recibirá la cantidad de $ 1, 462.50

En los casos de incapacidad inicial, si esta cantidad es de $1,000.00 o menos en los casos de accidentes o enfermedad ocurridos antes de junio 30 de 1989 ó de $1,500.00 ó menos en los casos de accidentes por enfermedad ocurridos a partir de julio 1ro de 1989, se le pagará en total de una sola vez Cuando la cantidad es mayor, se le pagará un pago inicial como anticipo de $1,000.00 ó de $1,500.00 (según lo antes especificado) y el balance le será pagado en plazos de $150.00

CERTIFICO: QUE LOS COMPUTOS ESTAN CORRECTOS Y QUE PROCEDE EL PAGO POR LA CANTIDAD ARRIBA INDICADA.

21 de junio de 1999 — /s/ Carmen L. Maldonado

Carmen L. Maldonado Cintrón

Jefa Comps

Fecha — Jefe, División de Reclamaciones o su Representante Autorizado

* PARA USO DEL MENOR — ESTE PAGO SE HARÁ A TRAVÉS DE

_____

CERTIFICO: QUE ESTE PAGO ESTA A TONO CON LA LEY DE COMPENSACIONES POR ACCIDENTES DEL TRABAJO

Dado en Humacao, Puerto Rico a _____

Oscar L. Ramos Melendez

Administrador

Ayudante Técnico — Por: /s/ Cecilia I. Flechas Santana

CECILIA I. FLECHAS SANTANA

Cargo oficial — Director Regional o su Representante Autorizado

NOTIFICACIÓN

CERTIFICO que la presente es copia fiel y exacta de su original. Que he notificado al lesionado y al patrono a las direcciones arriba indicadas y al Lcdo. Juan A. Hernández a su dirección conocida en PO Box 367059 San Juan PR 00936

13 AGO 1999 /s/ Ana Sanchez Ortega

ANA SANCHEZ ORTEGA

Fecha de La Notificación Secretario

** ESTA CANTIDAD NUNCA SERA MAYOR DE $12,000.00 SEGÚN LO ESTABLECE LA LEY.

ADVERTENCIA: De no estar conforme con la decisión , el lesionado tiene derecho a apelar ante la honorable Comisión Industrial de Puerto Rico dentro de un término de treinta (30) días de la fecha de esta notificación.

Los honorarios que fije la Comisión Industrial serán los únicos que podrá recibir el abogado del apelante por recibir sus servicios.

ORIENTACIÓN AL LESIONADO AL DORSO

LESIONADO

CERTIFIED TRANSLATION

Commonwealth of Puerto Rico
STATE INSURANCE FUND CORPORATION
Humacao, Puerto Rico

ADMINISTRATOR'S DECISION

Injured Party
Name and Address
Kenia M. Cintrón Parrilla
PO Box 232
Naguabo, PR

Employer
Name and Address
Lilly del Caribe, Inc.

Case Number
Fiscal Year Disp. Number
97 34 4428 9
ف Subrogation ف Minor*

Date of the Accident: May 1, 1997 Daily Wages: $99.99
Days of the Week: 5 Weekly Wages: $65.00
Place of the Accident: Carolina
Social Security No.: 584-66-4691 Insurance Code: 2

Description of the Accident:
The injured party alleges that due to the work she performs, she developed a pain in her neck, back, waist, both hands, arms and legs. Subsequently, she developed an emotional condition.

Injuries:
Rel. Emotional Condition.

Definite Discharge Date: February 3, 1999
Reporting Physician: Dr. Pedro F. Matías
Dr. Rolando Dones/gic

Resulting Disability:

5% - F.F.G. Emotional condition, independent from what was granted in this case.

After having studied the medical record of the case, the Administrator of the State Insurance Fund decides that the accident is one that is protected by the Work-Related Accidents Compensation Act, Public Law No. 45, approved on April 18, 1935, as subsequently amended. The injured party's aforementioned permanent partial disability having been acknowledged, the Administrator decides that the latter is entitled to receive, as determined by law, an additional compensation equivalent to 66 2/3% , based on the daily wages that she earned on the day of the accident.

According to the record of this case, she must be paid a compensation computed on the basis of the aforementioned weekly wages during a period of 22 ½ weeks, which amounts to the sum of $1,462.50**

From this amount deductions shall be made for:

A. Excess per diem paid ف This accident
ف Another accident $_____

B. Disability compensation granted and/or paid
1. In this accident $_____
2. In previous accident Case No._____ $_____

C. Other deductions $_____

Total amount to be deducted $_____

Once the aforementioned deductions, if any, have been made, the injured party shall receive the amount of $1,462.50.

In cases of initial disability, if this amount is $1,000.00 or less in cases of accidents or illness occurred before June

30, 1989, or of $1,500.00 or less in cases of accidents due to illness occurred after July 1, 1989, the total payment shall be made in one lump sum. When the amount is greater, an initial advance payment of $1,000.00 or $1,500.00 (as previously specified) shall be made, and the balance shall be paid in installments of $150.00.

I CERTIFY: THAT THE COMPUTATIONS ARE CORRECT AND THE PAYMENT FOR THE AMOUNT INDICATED ABOVE IS IN ORDER.

June 21, 1999 — /s/ Carmen L. Maldonado
Carmen Maldonado Cintrón
Comp. Director
Date — Director, Claims Division or his Authorized Representative

* FOR MINOR'S USE — THIS PAYMENT SHALL BE MADE THROUGH_____

I CERTIFY: THAT THIS PAYMENT IS IN ACCORDANCE WITH THE WORK-RELATED ACCIDENTS COMPENSATION ACT.

Given in Humacao, Puerto Rico on_____.

Oscar L. Ramos Meléndez
Administrator

Technical Assistant — By: /s/ Cecilia I. Flechas Santana
CECILIA I. FLECHAS SANTANA
Official Position — Regional Director or his Authorized Representative

NOTIFICATION

I CERTIFY that this is a true and exact copy of the original. That I have notified the injured party and the employer at the addresses indicated above and Atty. Juan A. Hernández at his known address at PO Box 367059, San Juan, PR 00936.

August 13, 1999 — /s/ Ana Sánchez Ortega

ANA SANCHEZ ORTEGA

Date of Notification — Secretary

**THIS AMOUNT SHALL NEVER BE GREATER THAN $12,000.00, AS ESTABLISHED BY LAW.

WARNING: If the injured party does not agree with the decision, he/she has the right to appeal before the honorable Puerto Rico Industrial Commission within a period of thirty (30) days from the date of this notification.

The attorney fees that the Industrial Commission sets shall be the only ones that the appellant's attorney may receive for his services.

ORIENTATION TO THE INJURED PARTY ON THE BACK.

INJURED PARTY

United States District Court
For the District of Puerto Rico
-CERTIFIED-
To be a correct translation prepared by
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Court

Estado Libre Asociado de Puerto rico
CORPORACIÓN DEL
FONDO DEL SEGURO DEL ESTADO
Región de Humacao, Puerto Rico

A QUIEN PUEDA INTERESAR

RE: NUMERO DE CASO 97-34-04428

CERTIFICACION

Certifico que Kenia M. Cintrón Parrilla radicó reclamación por accidente del trabajo el 18 de junio de 1997, mientras trabajaba para _____.

El status actual es el siguiente:

ف 1. La radicación del caso es muy reciente. Esta pendiente de determinarse la compensabilidad.

ف 2. El caso está en proceso de investigación para determinar la compensabilidad.

ف 3. El lesionado recibirá pago de dietas por el Fondo del Seguro de Anticipo mientras esté en descanso y hasta tanto se decida la compesabilidad.

ف 4. Se determine que no existe ف Relación Causal

ف Accidente del Trabajo

ف Se emitió decisión al respecto en _ de _ de _

ف Pendiente de Decisión de Administrador

ف 5. Se encuentra recibiendo tratamiento médico en descanso desde (fecha: Día, Mes, Año) _____ y se le autoriza a pago de dietas cada dos semanas por el importe de $ ____ y continuará recibiendo dichos pagos de a razón de $ ___ hasta que se le dé alta para trabajar.

ف 6. Recibe tratamiento médico y se le autoriza a continuar trabajando (CT) a partir del día _ de __ de __ y no recibe pago de dietas.

ف 7. Fue dado de alta el día _ de __ de _ y se reabrió el caso el día _ de __ de _.

- ف Cobrará dietas a partir de día _ de __ de _
- ف No cobrará dietas

ف 8. El lesionado recibirá dietas a partir del día _ de __ de _ hasta el día _ de __ de _ por concepto de Rehabilitación vocacional.

ف 9. El día _ de __ de _ fue dado de alta curado

- ف sin Incapacidad
- ف Con Incapacidad y el caso está en proceso de trámite para el pago de la compensación que le corresponde
- ف Se le confirma el alta dada el día _ de __ de _

ف 10. El día _ de __ de _ se le otorgo beneficios por ف Muerte, Incapacidad ف Total ف Parcial ascendente a $____

- ف Se esta liquidando en mensualidades de _____
- ف La última mensualidad fue pagada el día _____
- ف Al presente queda pendiente de pagar un balance de $_____
- ف Solicitó los beneficios del balance total. Se descontinuaron los pagos mensuales
- ف Solicitó los beneficios de una inversión parcial del balance. Al presente tiene un balance de $____ y mensualidad de $_____

ف 11. El caso está ante la consideración de la Comisión Industrial

☐ 12. La Comisión Industrial de Puerto Rico, le adjudicó aumento de incapacidad el día _ de __ de_

☐ 13. No recibe pagos de esta Corporación por ningún concepto

☐ 14. Recibió el primer pago por el importe de $___, según listado del. Continuará cobrando a razón de $___ diarios, _____ semanales, cada dos semanas

☐ 15. El lesionado recibió un total de $____ por concepto de _____ durante el año _____

☐ 16. Lesionado continua en tratamiento médico en descanso y no recibe pago de dietas

☐ 17. Caso fue relacionado y compensado

☐ 18. La próxima cita del lesionado es el día _ de __ de _

☒ 19. Otros: **Lesionada bajo tratamiento médico en descanso desde 18 de junio de 1997 por condiciones de Strain Lumbosacral Bilateral Strain, relacionadas. Bajo tratamiento en descanso, efectivo el 21 de noviembre de 1997, por alegada segunda condición emocional, pendiente de determinarse la compensabilidad por esta condición.**

8 de enero de 1998	/s/Silvia Rodríguez Montanez
	Silvia Rodríguez Montanez
Fecha (día, mes, año)	Nombre y Firma Encargado Sección de Información o su Representante Autorizado

TRANSLATION

Commonwealth of Puerto Rico
STATE INSURANCE FUND CORPORATION
Humacao Region

TO WHOM IT MAY CONCERN

RE: Case Number: 97-34-04428

CERTIFICATION

I Certify that **Kenia M. Cintrón Parrilla** filed a claim for a job-related accident on **June 18, 1997**, while working for _____

The current status of the case is the following:

ف 1. The filing of the case is very recent. Compensability is pending determination.

ف 2. The case is in the investigative process to determine the compensability.

ف 3. The injured party will receive per diem payments from the Advance Fund while she is at rest and until the compensation is decided.

ف 4. It was determined that per diem ف Causal relation ف Job-related accident does not exist.

ف A decision in this regard was issued on ____

ف Pending Administrator's decision

ف 5. Is receiving medical treatment while at rest since (date: Day, Month, Year) _____ and is authorized per diem payments every two weeks for the total amount of $ _____ and will continue to receive said payments at the rate of $ _____ until discharged and able to work.

ف 6. Receives medical treatment and is authorized to continue working (C.T.) starting on _____ and does not receive per diem payments.

ف 7. Was discharged on ____ and the case was reopened on _____

- ف Will collect per diem starting on _____
- ف Will not collect per diem

ف 8. The injured party will receive per diem starting on ___ until ____ in payment of Vocational Rehabilitation.

ف 9. On _____ she was discharged cured.

- ف Without disability
- ف With disability and the case is in the process of undergoing the procedures for the corresponding compensation payment
- ف The discharge given is confirmed on _____

ف 10. On _____ she was granted benefits for ف Death Disability ف Total ف Partial amounting to $____

- ف It is being liquidated in due monthly payments of $ ____
- ف The last monthly payment was paid on ____
- ف At present a pending balance of $_ remains
- ف She requested the benefits of the total balance. The monthly payments were discontinued.
- ف She requested the benefits of a partial investment of the balance. At present she has a balance of $____ and monthly payments of $ ____

ف 11. The case is before the consideration of the Industrial Commission.

☐ 12. The Industrial Commission of Puerto Rico adjudged disability increase on _____

☐ 13. Does not receive payments from this Corporation for any reason.

☐ 14. Received the first payment for the total amount of $___ , according to the list of ____. Will continue to collect at the rate of $ ___ daily, ____ weekly, biweekly

☐ 15. The injured party received a total of $ _____ in payment of _____ during the year _____.

☐ 16. The injured party continues under medical treatment at rest and does not receive per diem payments.

☐ 17. The case was reported and compensated.

☐ 18. The injured party's next appointment is on _____

☒ 19. Others: **The injured party under medical treatment at rest since June 19, 1997, for Lumbosacral Strain and Bilateral Strain related conditions. Under treatment at rest effective November 21, 1997, for alleged second emotional condition, the compensability for this condition pending determination.**

January 8, 1998	/s/ Sylvia Rodríguez Montañez
	Sylvia Rodríguez Montañez
Date (Month, Day, Year)	Name and Signature of Person in Charge of Information Section or His Authorized Representative

United States District
For the District of Puerto Rico
-CERTIFIED-
To be a correct translation made
and/or submitted by the interested party
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Estado Libre Asociado de Puerto rico
CORPORACIÓN DE
FONDO DEL SEGURO DEL ESTADO
Región de Humacao, Puerto Rico

A QUIEN PUEDA INTERESAR

RE: NUMERO DE CASO 97-34-4428

CERTIFICACION

Certifico que Kenia M. Cintrón Parrilla radicó reclamación por accidente del trabajo el 18 de junio de 1997, mientras trabajaba para _____.

El status actual es el siguiente:

ف 1. La radicación del caso es muy reciente. Está pendiente de determinarse la compensabilidad.

ف 2. El caso está en proceso de investigación para determinar la compensabilidad.

ف 3. El lesionado recibirá pago de dietas por el Fondo del Seguro de Anticipo mientras esté en descanso y hasta tanto se decida la compesabilidad.

ف 4. Se determine que no existe ف Relación Causal

ف Accidente del Trabajo

ف Se emitió decisión al respecto en _ de _ de _

ف Pendiente de Decisión de Administrador

ف 5. Se encuentra recibiendo tratamiento médico en descanso desde (fecha: Día, Mes, Año) _____ y se le autoriza a pago de dietas cada dos semanas por el importe de $ ____ y continuará recibiendo dichos pagos de a razón de $ ___ hasta que se le dé alta para trabajar.

ف 6. Recibe tratamiento médico y se le autoriza a continuar trabajando (CT) a partir del día _ de __ de __ y no recibe pago de dietas.

ف 7. Fue dado de alta el día _ de __ de _ y se reabrió el caso el día _ de __ de _.

- ف Cobrará dietas a partir de día _ de __ de _
- ف No cobrará dietas

ف 8. El lesionado recibirá dietas a partir del día _ de __ de _ hasta el día _ de __ de _ por concepto de Rehabilitación vocacional.

ف 9. El día _ de __ de _ fue dado de alta curado

- ف sin Incapacidad
- ف Con Incapacidad y el caso está en proceso de trámite para el pago de la compensación que le corresponde
- ف Se le confirma el alta dada el día _ de __ de _

[xx] 10. El día **3** de **febrero** de **1999** se le otorgo beneficios por ف Muerte, Incapacidad [xx] Total ف Parcial ascendente a **$9,9782.50**

- [xx] Se esta liquidando en mensualidades de **$150.00**
- [x] La última mensualidad fue pagada el día **agosto 1999**
- [x] Al presente queda pendiente de pagar un balance de **$5,988.50**
- ف Solicitó los beneficios del balance total. Se descontinuaron los pagos mensuales
- ف Solicitó los beneficios de una inversión parcial del balance. Al presente tiene un balance de $____ y mensualidad de $_____

☐ 11. El caso está ante la consideración de la Comisión Industrial

☐ 12. La Comisión Industrial de Puerto Rico, le adjudicó aumento de incapacidad el día _ de __ de_

☐ 13. No recibe pagos de esta Corporación por ningún concepto

☐ 14. Recibió el primer pago por el importe de $___, según listado del. Continuará cobrando a razón de $___ diarios, _____ semanales, cada dos semanas

☐ 15. El lesionado recibió un total de $____ por concepto de _____ durante el año _____

☐ 16. Lesionado continua en tratamiento médico en descanso y no recibe pago de dietas

☐ 17. Caso fue relacionado y compensado

☐ 18. La próxima cita del lesionado es el día _ de __ de _

☒ 19. Otros: **Total Pagado por Concepto de dietas $5,538.00.**

17 de septiembre de 1999 /s/Aida Rosario Rivera

Aida Rosario Rivera-Oficial de Inf.

Fecha (día, mes, año) Nombre y Firma Encargado Sección de Información o su Representante Autorizado

TRANSLATION

Commonwealth of Puerto Rico
STATE INSURANCE FUND CORPORATION
Humacao Region

TO WHOM IT MAY CONCERN

RE: Case Number: 97-34-04428

CERTIFICATION

I Certify that **Kenia M. Cintrón Parrilla** filed a claim for a job-related accident on **June 18, 1997**, while working for _____

The current status of the case is the following:

ف 1. The filing of the case is very recent. Compensability is pending determination.

ف 2. The case is in the investigative process to determine the compensability.

ف 3. The injured party will receive per diem payments from the Advance Fund while she is at rest and until the compensation is decided.

ف 4. It was determined that per diem ف Causal relation ف Job-related accident does not exist.

ف A decision in this regard was issued on ____

ف Pending Administrator's decision

ف 5. Is receiving medical treatment while at rest since (date: Day, Month, Year) _____ and is authorized per diem payments every two weeks for the total amount of $ _____ and will continue to receive said payments at the rate of $ _____ until discharged and able to work.

ف 6. Receives medical treatment and is authorized to continue working (C.T.) starting on _____ and does not receive per diem payments.

ف 7. Was discharged on ____ and the case was reopened on _____

- ف Will collect per diem starting on _____
- ف Will not collect per diem

ف 8. The injured party will receive per diem starting on ___ until ____ in payment of Vocational Rehabilitation.

ف 9. On _____ she was discharged cured.

- ف Without disability
- ف With disability and the case is in the process of undergoing the procedures for the corresponding compensation payment
- ف The discharge given is confirmed on _____

[xx] 10. On **February 3, 1999** she was granted benefits for ف Death

Disability ف Total ف Partial amounting to $____.

- [xx] It is being liquidated in due monthly payments of **$9,782.50**
- [x] The last monthly payment was paid on **$150.00**
- [x] At present a pending balance of **$5,988.50** remains
- ف She requested the benefits of the total balance. The monthly payments were discontinued.
- ف She requested the benefits of a partial investment of the balance. At present she has

a balance of $____ and monthly payments of $ ____

☐ 11. The case is before the consideration of the Industrial Commission.

☐ 12. The Industrial Commission of Puerto Rico adjudged disability increase on _____

☐ 13. Does not receive payments from this Corporation for any reason.

☐ 14. Received the first payment for the total amount of $___ , according to the list of ____. Will continue to collect at the rate of $ ___ daily, ____ weekly, biweekly

☐ 15. The injured party received a total of $ _____ in payment of _____ during the year _____.

☐ 16. The injured party continues under medical treatment at rest and does not receive per diem payments.

☐ 17. The case was reported and compensated.

☐ 18. The injured party's next appointment is on _____

☒ 19 Others: **TOTAL AMOUNT PAID FOR THE PER DIEM PAYMENTS $5,538.00**

September 17, 1999 — Date (Month, Day, Year)

/s/ Aida Rosario Rivera
Aida Rosario Rivera-Info. Officer
Name and Signature of Person in Charge of Information Section or His Authorized Representative

United States District
For the District of Puerto Rico
-CERTIFIED-
To be a correct translation made
and/or submitted by the interested party
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

HUMACAO X RAY & ULTRA SOUND CENTER

Jorge Perez Bras, MD
Francisco Vargas Soto, MD
Ricardo Castro Ramirez, MD
Carlos Guardiola, MD

Tel. (787) 852-3550
Fax. (787) 850-1141

Calle Antonio Lopez No. 62
Humacao, Puerto Rico 00791

KENIA M. CINTRON PARRILLA
42 YRS.
DR. MUNDO
02/28/2002

DORSAL SPINE (AP AND LATERAL):

The examination demonstrates minimal scoliosis of the dorsal spine in the ap view convexity towards the left side. The vertebral body heights and disc interspaces are preserved.

No evidence of fracture, dislocation or spondylolisthesis.

LUMBAR SACRAL SPINE (AP, LATERAL AND OBLIQUE):

The examination demonstrates evidence of transitional S1 vertebra. The lumbar vertebral body heights and lumbar disc interspaces appear preserved.

No evidence of fracture, dislocation or spondylolisthesis.

/s/ Francisco Vargas Soto
Francisco Vargas Soto, MD
Radiologist

03/01/2002
jgc

José A. Nassar, MD
Carlos J. Nassar, MD
Diplomates American Board of Radiology

63 Cruz Ortiz Stella Ave.
P.O. Box 9132
Humacao, PR
00718
Phone: (787) 852-0920
Fax: (787) 852-6685

RADIOLOGY SONOGRAPHY MAMOGRAPHY
COMPUTED TOMOGRAPHY
BONE DESITOMETRY
MAGNETIC RESONANCE IMAGING (M.R.I.)

Name of patient: Kenia Cintrón Parrilla Age: 46
Referring Physician: Dr. J. Mundo
Date of examination: 4/2/02

MRI OF THE LUMBOSACRAL SPINE:

Clinical history: Back pain. Rule out HNP

Technique: An MRI of the lumbosacral spine was performed using the following sequences: sagittal TSE T2, sagittal SE T1, axial TSE T2 through the L2/L3, L3/L4, and L5/S1 disk spaces, as well as an axial contiguously acquired SE T1 weighted sequences from L3 through S1.

Findings: There is a suggestion of a partially transitional lumbosacral junction with presumably lumbarized S1 vertebral body. Please take this into account when assigning levels clinically, in the present study, and correlate with plain films of the lumbar spine.

The conus is normal in signal and ends the assigned T12 level.

The vertebral bodies have normal height, signal and alignment.

At the assigned T12/L1, L1/L2, L2/L3, L3/L4, L4/L5, L5/S1 and S1/S2 levels, no bulges, herniations, canal of foraminal compromise is seen.

IMPRESSION:

1. Transitional lumbosacral junction.
2. No evidence of degenerative or discogenic disease.

/s/ Carlos J. Nassar
Carlos J. Nassar MD
cns/040302

José A. Nassar, MD
Carlos J. Nassar, MD
Diplomates American Board of Radiology

63 Cruz Ortiz Stella Ave.
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RADIOLOGY SONOGRAPHY MAMOGRAPHY
COMPUTED TOMOGRAPHY
BONE DESITOMETRY
MAGNETIC RESONANCE IMAGING (M.R.I.)

Name of patient: Kenia Cintrón Parrilla Age: 46
Referring Physician: Dr. J. Mundo
Date of examination: 3/12/02

CERVICAL SPINE MRI:

Clinical history: Pain. R/O HNP and canal stenosis

Technique: An MRI of the cervical spine was performed using the following sequences: sagittal SE T1, sagittal TSE T2, axial T2-weighted gradient echo sequence from C2 through T1 and an axial SE T1 sequences from C2 through T1.

Findings: The cervical cord has normal signal and shape in al pulses sequences despite some motion artifact in the sagittal T2 weighted sequences.

There is straightening of the normal lordosis of the cervical spine, which could be positional or secondary to muscle spasm. Otherwise, the vertebral body height and signal are well preserved.

At the C2/C3, C3/C4, and C7/T1 levels, no bulges, herniations, canal or foraminal comprise is seen.

The vertebral bodies have normal height, signal and alignment.

At C4/C5, C5/C6, and C6/C7 levels, there are very small cicunferential disk bulges with small posterolateral osteophytes mildly narrowing the central and both neural foramina.

IMPRESSION: Mild discogenic and degenerative cervical spine disease, as described above.

/s/ Carlos J. Nassar
Carlos J. Nassar MD
cns/040302

Centro Fisiátrico Torres, Inc.

Luz Torres Romero, MD
Fisiatra

Ave. Font Martelo #117
Esq. Flor Gerena
Humacao, Puerto Rico

Name: Kenia Cintron Parrilla Age: 46 Date: 4/24/02
Referred by: Dr. E. Mundo Clinical Dx: R/O Neurophathy

ELECTROMYOGRAPHIC EXAMINATION

F=Fibrillation PSW=Positive Sharp Wave
NAP=Normal Action Potential

Muscles	Insertion Activity	At Rest	Minimal Contraction	Maximal Contraction
Vastus Medialis R/L	Normal	Silent	NAP	Complete Pattern
Anterior Tibialis R/L	Normal	Silent	NAP	Complete Pattern
Madial Gastro R/L	Normal	Silent	NAP	Complete Pattern
Peroneus Longus R/L	Normal	Silent	NAP	Complete Pattern
Paraspinal Muscles at the Bony Level				
L 3	Normal	Silent	NAP	--
L 4	Normal	Silent	NAP	--
L 5	Normal	Occ. PSW	NAP	--
S 1	Normal	Occ. PWS Rare Fib	NAP	--

Interpretation:

FINDINGS ARE COMPATIBLE WITH L5-S1 ROOT IRRITATION.

Performed By: /s/ Luz Torres, M.D.

Luz Torres Romero, M.D.

Centro Fisiátrico Torres, Inc.

Luz Torres Romero, MD
Fisiatra

Ave. Font Martelo #117
Esq. Flor Gerena
Humacao, Puerto Rico

Name: Kenia Cintron Parrilla Age: 46 Date: 4/24/02
Referred by: Dr. E. Mundo Clinical Dx: R/O Neurophathy

NERVE CONDUCTION EXAMINATION

Muscles	Proximal Latency	Distal Latency	Distance MM	Amplitud MV	Conduction Velocity M/Sec
Peroneal R	10.1	2.2	395	very low	50
L	10.2	2.7	400	very low	39
Posterior R	15.5	6.4	400	very low	42
L	15.0	6.3	380	very low	43
Sensory Conduction Nerve Tested	On set M/Sec	Peak M/Sec	Distance MM	Amplitud MV	Conduction Velocity M/Sec
Sural R	--	4.1	140	--	--
L	--	4.3	140	--	--

Interpretation:

FINDINGS ARE COMPATIBLE WITH SIGNIFICANT AXONAL NEUROPATHY OF TESTED NERVES. POLYNEUROPATHY. (SENRORY MOTOR)

Performed By: /s/ Luz Torres, M.D.
Luz Torres Romero, M.D.

NU Scan Center

Patient: Kenia M. Cintrón Parrilla Record No: 02-04-0246
Ref. Physician: Dr. Mundo López de Victoria
Date: April 22, 2002

WHOLEBODY BONE SCAN WITH FLOW

A three-phase bone scan was performed in a scintillation camera, after the intravenous administration of a 34.4 mCi (1272.8 MBb) dose of HDP tagged with 99mTc. The images were obtained immediately (blood flow and blood pool images) and the three hours after injection (delayed images). The findings are as follow:

BLOOD FOLW AND BLOOD POOL IMAGES:

- Performed in the posterior view of the lumbar region. They showed normal blood flow pattern, distribution and concentration.

DELAYED IMAGES: Obtained three hours after injection show:

- Slightly irregular tracer distribution throughout the vertebral column.
- Mild irregular increase activity in the left shoulder, wrists, several interphalangeal joints (proximal and distal) of both hands, hips, tarsal region and 1st metatarsophalengal joint of both feet and interphalangeal joint of the left 1st toe.
- Normal, symmetric radiotracer distribution throughout the rest of the skeleton.
- Adequate visualization of the renal images.
- The urinary bladder appears normal.

IMPRESSION:

- Mild degenerative joint disease in the described areas.

Thank you very much for referring this patient to our center. Please feel free to ask any question you may consider pertinent. We encourage consultation.

Respectfully Yours,

/s/ Hiram Rivera Luna
Hiram Rivera Luna, MD
Director

/s/Carmiña M. Ruiz Rodríguez, MD
Carmiña M. Ruiz Rodríguez, MD
Chief Nuclear Medicine Service

Note: For follow up studies patient must bring the previous studies films and/or copy of previous reports.

PSYCHIATRIC QUESTIONNAIRE

Claimant's Name: Kenia M. Cintrón Parrilla
SS Number:
Our Record:
Date:

1. Date treatment: First **6-11-97** Last **6-26-97** Frequency **Seen in two sessions**.

2. Chief Complaints: **Depressed. Pt. complained of sadness, anxiety, irritability, difficulty with sleep. Was having serious marital problems. Had difficulties with memory and concentration**.

3. Please give history including initial symptoms with dates first experience and associates findings: **Pt. was experiencing symptoms since five to six two months before the first visit**

4. Please indicate the date when the condition first imposed limitation on claimant: **Approximately two months before her first visit**.

5. Please describe subsequent course, including dates and details of any hospitalization; give treatment with date started: **Pt. was only seen on two occasions, thus subsequent course is unknown. No hospitalizations. Pt. was started on Zoloft 50mg on 6-11-97**.

6.a. Have you review other doctor's reports in addition to taking claimant's history?

Yes __ No **X**

b. Please detail all evidence before your consideration from other sources other than your own. **None**.

7. Briefly: states your findings on the claimant's first visit: **Depressed with psychomotor retardation, at times agitated. Very troubled by family problems**.

8. How would you describe the claimant's condition in this visit: Slight_ Moderate**X** Moderately Severe _ Severe_

9. Has the condition progress in severity? Yes __ No__ **Unknown at present**.

10. Please describe briefly what symptoms have progressively worsened? **On her second visit symptoms still persisted**.

11. In your opinion, states the date in which the claimant became disabled to perform work related duties: **Approx. 8 to 6 weeks before her first visit**.

12. Describe those symptoms which in your opinion preclude the claimant from performing work activities in a sustained basis: **At present pt's condition is unknown. When pt was seen her depressive symptoms and anxiety were disabling at that time**.

13. If there is a physical impairment as well a mental impairment please complete questions thirteen through twenty –one.

Did you find any clinical evidence to support a psychological basis for claimant's pain? Yes __ No __

State briefly; what are those findings? **N/A.**

14. Could combined effects of physical and mental impairments result, in a given case, in an individual patient suffering a greater degree of functional limitations than the functional limitation attributable to either the mental or physical impairment alone? That is, may the total functional restriction, resulting from mental and physical impairments,

in combination, be greater than the sum of the parts? Yes __ No __ **N/A**.

15. If you answered yes to question 14, in your opinion, does such explain claimant's apparent marked functional limitations? Yes __ No __

Comments if needed: **N/A**

16. If you answered "yes" to number 14, can a reasonable medical inference be made concerning both the existence of mental impairment you diagnosed and the interactive effect of claimant's physical and mental impairments? Yes __ No__ **N/A**

17. Does the fact that you did not give the claimant a complete WAIS-R or other clinical test mean, as a matter of clinical certainly, that there is insufficient clinical data to validate the conclusion you derived from the MMPI and your clinical interview? Yes __ No __ **N/A**.

18. In your opinion, is there a relationship between person's physiological, emotional and personality make up and that person's perception of and ability to cope with pain? If so, does claimant's physiological, emotional and personality make up, which preexisted claimant's problems adversely affect claimant's ability to cope with pain and physical limitations resulting from such condition? Yes __ No __

Comments if needed: **N/A**

19. Does claimant's personality make up referred to above, suggest that is causing the claimant to perceive a greater level of pain and disability than one would expect from another suffering a condition with the same physical findings but with more normal range MMPI scales? Yes __ No __ **N/A**.

20. Are the dynamic of claimant's MMPI profile reflected in current behavior patterns or merely predictive of future behavior? Reflected __ Predictive __ **N/A**.

21. If an individual actually experiences greater pain and disability from a physical impairment as a result of claimant's personality structure, would you agree that this could constitute an obstacle to preclude gainful employment? Yes __ No __ **N/A**.

Comment if needed:

22. Please check from the following list those symptoms which accordingly to your exam are present in this claimant:

Disorientation to time__	Blunt Affect__
Place __ Person __	Flat Affect__
Memory impairment √	Inappropriate Affect__
Perceptual disturbances__	Emotional Withdrawal √
Thinking disturbances__	Isolation__
Change in personality__	Anhedonia √
Disturbance in mood √	Pervasive lost of Interest__
Emotional lability √	Appetite Disturbance √
Impairment in impulse	Change in Weight__
control √	Sleep disturbance √
Loss of measured	Psychomotor agitation__
intellectual ability__	Psychomotor retardation √
Delusions__	Decreased Energy √
Hallucinations__	Feelings of guilt √
Catatonic__	Feelings of worthlessness √
Grossly disorganized	Difficulty concentrating √
behavior__	Difficulty thinking __

Incoherence __
Loosening of associations __
Illogical Thinking __
Poverty of content of speech__
Suicide thoughts__
Paranoid thinking __
Hyperactivity √
Pressures of speech__
Flight of ideas__
Inflated self-esteem__
Decreased need for sleep__
Easy distractibility__
Consequences not recognized__
Bipolar Syndrome; manic And depressive episodes__
Non-organic Disturbance of:
__vision __speech __hearing __use of a limb __movement and its control __ sensation
Unrealistic interpretation of physical signs__
__or symptoms
Seclusiveness__
Autistic thinking __
Pathologically inappropriate:
__suspiciousness __hostility

Marked restriction of activities of daily living __
Marked difficulties in maintaining social functioning __
Deficiencies in concentration √
Deficiencies in persistence__
__or pace
Failure to complete task in timely manner__
Episodes of deterioration__
Episodes of decompensation in:
__work or worklike settings
__with exacerbation of signs or symptoms
Alcohol Abuse__
Substance Abuse__
__Marihuana
__Cocaine
__Heroine
__Prescribed Medication
__Other
__Intense and Unstable interpersonal relationship
Disturbances of mood √

Oddities of: __thought
__perception __speech
__behavior
Passivity__
Agressivity__

Disturbances of affect √
Pathological dependence √
√ Impulsive behavior
__Damaging behavior

23. What is claimant's Axis I, II, and V diagnosis?

Axis I **Major Depression**
Axis II **No diagnosis**
Axis V (Current) **60-65**
Axis V (Last year) **60-65**

24. If there is no DSM III diagnosis, is the claimant's personality structure such that claimant cannot cope sufficiently with illnesses to effectively deal with illness and also respond appropriately to the mental demands of work? __ Yes __ No **N/A**

25. Does claimant's illness physiological affect claimant such that, even though claimant might not have a DSM III diagnosis, claimant's ability to engage in mental demands of work has been comprised? Yes__ No__ **N/A**.

Comment briefly:

26. In your opinion, is there an interactive effect between claimant's physical and mental impairment which result in claimant experiencing a greater level of disability than one would expect from the physical or mental impairment alone? (For purposes of this answer, please consider personality ort character orders in the definition of mental impairments) Yes __ **No X**

27. Do you agree that claimant's ability to deal with work stresses on sustained basis and in a competitive placement is highly questionable in light of the interactive

effect between claimant's physical and mental impairment? __ Agree __ Disagree. **No physical impairment known**.

28. Does claimant's personality dynamics suggest that claimant is likely to have more than average difficulty in coping with this type of condition as compared to a person whose MMPI profile all had values within normal ranges? __ Yes __ No **N/A**

29. Do you agree that claimant's ability to cope with the stress of physical impairment is highly questionable? __Agree __ Disagree **N/A**

30. Does the claimant's personality profile and/or other psychological characteristics suggest that claimant would have more difficulty in learning and adapting to a new job than someone else of similar age who did not share claimant's personality profile and personality characteristic? **Yes X** No __

31. Do your test results support the notion that claimant has, due to his/her physical impairments and personality dynamics, psychodynamically aged at a faster rate than his/her chronological age alone would indicate? __ Yes __ No **N/A**. **No psychometric testing was performed**.

32. Are the test results consistent with the notion that the foregoing answers are true for claimant from _____,19__? __ Yes __ No **N/A**. **No test performed**.

/s/ R Fabré, MD
Psychiatrist
#7799
License Number
10-2-97
Date

DDPR-79

DISABILITY DETERMINATION PROGRAM

P.O. BOX 71301 1 OF 4
SAN JUAN, Puerto Rico 00936-8401
FAX: (809) 250-1689
TELEPHONE: (809) 754-8989 EXT. 0313

DR. HECTOR L. TORRES
AVE. MUÑOZ MARIN NO. 53
HUMACAO, PR 00791

RE: KENIA M. CINTRON PARRILLA
P O BOX 232
NAGUABO, PR 00718

SSN: 584-66-4691-00
EXAMINER:

PSYCHIATRIC MEDICAL REPORT

WE WOULD APPRECIATE YOUR ASSISTANCE IN PROVIDING THE FOLLOWING INFORMATION.

1. Date of First sign of Illness 1997
   Date First Seen **4 febrero/98**
2. Frequency of Contact **Varias visitas**

Exact date of visits **4 febrero/98, 7 abril/98, 7 mayo/98, 15 mayo/98**

3. Complains and findings on the first mental status exam. Give Date. **Tristeza, ansiedad, deprimida, minusvalia "me siento inutil", irritabilidad, aislamiento, "soledad", explosiones de ira, ansiosa, nerviosa, intranquila, llanto frequente, perdida de energia, distractibilidad, soledad,**

vacio, ideas de muerte recurrente, perdida de interes en actividades diarias, sin deseos de vivir, pobre concentracion, tiempo de respuesta prolongado, perdida de vida intima, perdida de funciones cognocitivas e intelectuales, pobre socializacion, insominio, bloqueos mentales, memorias menoscabadas, pensamientos negativos, pobre control de impulsos, olvidos frecuentes, enlentecimiento psicomotor, no sale de la casa, dolores de cuello, manos y espalda, multiples quejas somaticas, miedos irracionales, ataxia al caminar, sueños repetidos con el suceder, malestaar psicologico intenso.

4. Psychiatric history:

a. Onset: **1997**. Development of condition, remissions, exacerbations, hospitalizations, and any specials test that substantiate the allegations and diagnosis. **Del historial se obtiene que la paciente comenzo a tratarse su enfermedad emocional en el año 1997 con el dr. Fabre, psiquiatra. Ha estado en tratamiento luego con dr. Torres.**

b. Substance abuse: Include any history of alcohol/substance abuse. **No tiene historial de abuso de substancia.**

Past Medical History: Significant physical conditions in the claimant's history. **Cervical miositis, mild posterior, disc bulge c4-c5, asymetric posterior disc bulge with lateralization c5-c6, bilateral l5-s1 roots involvement, radiculopatia, carpal tunnel syndrome bilateral.**

6. Family/Social History: (Provide a history of the effects of the mental disorder on the claimant's family and social relationships. Focus on the history of additive, violent, disruptive or other maladaptive behavior). **Los efectos de la**

condición mental de esta paciente hacen que su relación con la familia sea sumamente pobre, su conducta es de mala adaptación en el hogar.

7. Date of last interview: **15 Mayo/1998** (self sufficiency in coming to the office or by whom accompanied and mode of travel). **Paciente acompañada por un familiar**.

8. Mental Status: This section should be based on the latest interview.

a. General appearance, attitude, behavior and interaction with therapist etc.) **Aparenta edad cronológica. Cooperadora. Buen cuidado personal. No maquillaje. Paciente lucía enferma**.

b. Flow of thought and speech: (psychomotor activity, coherence, relevance, logic, associations, blocking, mutism, etc.). **Presenta enlentecimiento psicomotor. Flujo y producción adecuados. Presenta bloqueos mentales. Tiempo de respuesta prolongado tono bajo**.

c. Content of thought: (hallucinations, delusions, obsessions, compulsions, phobias, ideas of reference and suicidal or homicidal ideas). Please describe positive findings and specifically note if claimant was hallucinating during the interview. Give verbatim quotes, when appropriate or illustrative incidents. **Paciente presenta ideas de muerte recurrente, pensamiento negativos**.

d. Affect/Mood: **Entre triste deprimido, ansioso**

e. Orientation

1. Person: **Orientada**
2. Place: **Orientada**
3. Time: **Desorintada**

f. Memory: (you can use or suggested test or mention others of your choice.)

1. Immediate: Please give the n\umber of digits he/she can repeat forwards and backwards. Test of five unrelated words objects. **Menoscabada, paciente no pudo repetir dígitos hacia atrás. No recordó todas las 5 palabras**.

2. Short Term Memory: Tests of five words after five minutes. **Menoscabada, falló, paciente no recordó**.

3. Recent: Ask claimant how she/he got to this office. Test ability to remember what happened a few hours ago or during the week. **Paciente es traida en carro privado.**

4. Remote: When you born? Ability to remember what has happened in the past. **Afectada, paciente no recordó la fecha de matrimonio**.

5. Since when the claimant has presented memory problems and/or disorientation? **Por el historial desde 1997**.

g. Attention: Indicate whether the claimant is attentive to what is being asked or explained. Indicate if attention is kept all the time; or if she becomes distracted, etc. **La paciente no tiene la habilidad de mantener su atención durante un tiempo determinado en una tarea se distrae con facilidad**.

h. Concentration: (Please consider claimant's education and age)

1. Ask claimant to recite the months of the year and the days of the week backwards. **Paciente fallo en decir los 12 meses del año**.

2. Substract in series of 3 and 7 **Paciente no pudo restar ni 3 ni 7 de 100**.

i. Intellectual Functions: (eg, arithmetic calculations, general information). **Paciente no pudo contestar todas las preguntas de cálculos matemáticos simples ni las de información general**.

j. Judgment: (impulsivity, understanding of situation and response) **La paciente reconoce su condición y pide ayuda**.

k. Insight: **Pobre**

10. Current Functioning: Include patient's independence in performing the following: (if supervision is needed describe extend)

a. Activities of daily living: (e.g. household tasks, taking public transportation, using telephones, etc.) **Paciente no hace ningun tipo de tarea en el hogar, no lava, no plancha, no cocina, no hace compra, no ve television, ni lee el periodico, no hace uso del transporte publico, se mentiene aislada, no le gusta estar donde hay mucha gente ni grupos.**

b. Social Functioning: Include example of disturbed behavior, ability to initiate social contacts, to communicate, interact, and participate in groups activities): **Paciente no tiene la habilidad de mantener contactos sociales lo que hace que su comunicacion con las demas personas sea una sumamente pobre, no pertenece a grupos.**

c. Stress Tolerance: (Deterioration and Decompensation: Describe any episode of decompensation or deterioration that have occurred in situations similar to those that might be encountered at work, e.g. situations requiring decisions, scheduling, attendance completing tasks, interactions with supervisors): **Paciente se deteriora**

y descompensa ante el minimo estresor y no tolera ningun tipo de supervision.

d. Task Persistence: (Describe with samples the claimant's ability to focus attention on and persist at tasks and/or complete a normal workday without interruption). **Paciente no tiene la habilidad de mantener su foco de atencion en la mas minima tarea. No realiza ninguna tarea.**

e. Any episode of panic attacks? Give the frequency duration. **Paciente no presenta ataques de panico.**

10. Therapy: Indicate current therapy and response, medications, dosage, compliance, side effects, including the ability to engage in competitive employment: **Paciente en la actualidad esta tomando Doral 15 mgs. H.S., Paxil 20 mgs. B.I.D. y Tranxene 7.5 mgs. T.I.D.. Aun así la respuesta a la medicacion es muy pobre, esto hace que no tenga habilidad competitiva, laboral y sea una completamente nula, su incapacidad es una total y permanente.**

11. Diagnosis: EJE I - **DEPRESION MAYOR SEVERA**
EJE II - **71.09**
EJE III- **VER PAST MEDICAL HISTORY PREG 5 PAG. NO. 2 DE ESTE CUESTIONARIO**
EJE IV - **CODIGO 5**
EJE V- **GAF 50-41 POBRE FUNCIONALIDAD**

12. Prognosis: **POBRE**

13. Ability to handle funds **X Yes** __No __Unknown

Knowing that anyone making a false statement or representation of a material fact for use in determinating a right payment under the Social Security Act commits a crime punishable under federal Law, I certify that above statements are true.

6244	/s/ Hector L. Torres
LICENSE NUM	PHYSICIANS SIGNATURE
PSIQUIATRA	20 MAYO/98
SPECIALTY	DATE

CERTIFIED TRANSLATION

DDPR- 79

DISABILITY DETERMINATION PROGRAM

PO BOX 71301
SAN JUAN, PUERTO RICO 00936-8401
FAX (809) 250-1689
TELEPHONE 754-8989 EXT. 0313

DR. HECTOR L. TORRES
53 MUÑOZ MARIN AVE.
HUMACAO, PR 00791

RE: KENIA M. CINTRON PARRILLA
PO BOX 232
NAGUABO, PR 00718

SSN: 584-66-4691-00
EXAMINER:

PSYCHIATRIC MEDICAL REPORT

WE WOULD APPRECIATE YOUR ASSISTANCE IN PROVIDING THE FOLLOWING INFORMATION.

1. Date of first sign of illness **1997** Date first seen **February 4/1998**
2. Frequency of contacts **Several visits** Exact date of visits: **February 4, 1998, April 7, 1998, May 7, 1998, May 15, 1998**.
3. Complaints and findings on the first mental status exam. Give date. **Sadness. Anxiety, depressed, sense of worthlessness "I feel useless", irritability, withdrawal, "loneliness", bursts of rage, anxious, nervous, restless, frequent crying, loss of energy,**

distractability, loneliness, emptiness. Recurrent thoughts of death, loss of interest in daily activities, no desire to live, poor concentration, prolonged response time, loss of intimate life, loss of cognitive and intellectual functions, poor socialization, insomnia, mental blocks, impaired memory, negative thoughts, poor control of impulses, frequent forgetfulness, psychomotor retardation, does not leave the house, pain in neck, hands and back, multiple somatic complaints, irrational fears, ataxia when walking, recurrent dreams with occurrences, intense psychological malaise.

4. Psychiatric history:
   a. Onset: **1997**. Development of the condition, remissions, exacerbations, hospitalizations, and any special tests that substantiate the allegations and diagnosis. **From the history, it appears that the patient started treatment of her emotional illness in the year 1997 with Dr. Fabre, psychiatrist. She has been under treatment afterwards with Dr. Torres.**
   b. Substance abuse: Include any history of alcohol/substance abuse. **She has no history of substance abuse**.
5. Past medical history: Significant physical conditions in the claimant's history. **Cervical Miositis. Mild Posterior Disc Bulge C4-C5, Asymmetric Posterior Disc Bulge With Lateralization C5-C6, Bilateral L5-S1 Roots Involvement, Radiculopathy, Bilateral Carpal Tunnel Syndrome.**

6. Family/Social history: (Provide a history of the effects of the mental disorder on the claimant's family and social relationships. Focus on the history of addictive, violent, disruptive or other maladaptive behavior).

   This patient's relationship with her family is very poor as a result of her mental condition. She presents maladaptive behavior in her home.

7. Date of last interview: MAY 15.1998 (Self-sufficiency in coming to the office or by whom accompanied and mode of travel). **Patient was accompanied by a relative.**

8. Mental status: This section should be based on the latest interview.

   a. General appearance, attitude, behavior and interaction with therapist, etc. **She represents her chronological age, cooperative, well groomed, no make-up, patient looks ill.**

   b. Flow of thought and speech: (psychomotor activity, coherence, relevance, logic, associations, blocking, mutism, etc.) **Presents psychomotor retardation, adequate flow and production, presents mental blocks, prolonged response time, low tone.**

   c. Content of thought: (hallucinations, delusions, obsessions, compulsions, phobias, ideas of reference and suicidal and homicidal ideas). Please describe positive findings and specifically not if claimant was hallucinating during the interview. Give verbatim quotes, when appropriate, or illustrative incidents. **Patient presents recurrent thoughts of death, negative thoughts.**

d. Affected Mood: **a combination of sad, depress, anxious**.

e. Orientation:

   1. Person: **Oriented**
   2. Place: **Oriented**
   3. Time: **Oriented**

f. Memory: (You can use our suggested tests or mention others of your choice).

   1. Immediate: Please give the numbers of digits he/she can repeat forwards and backwards. Test of five unrelated words, objects. **Impaired, patient was unable to repeat digits backwards, did not remember all the 5 words**.
   2. Short term memory: Test of five words after five minutes. **Impaired, failed, patient did not remember.**
   3. Recent: Ask claimant how he/she got to this office. Test ability to remember what has happened a few hours ago or during the week. **Patient was brought in private car**.
   4. Remote: When were you born? Ability to remember what has happened in the past. **Affected, patient did not remember her date of marriage**
   5. Since when the claimant has presented memory problems and/or disorientation? **According to her history, since 1997.**

g. Attention: Indicate whether the claimant is attentive to what is being asked or explained. Indicate if attention is kept all the time, or if he/she becomes

distracted, etc. **The patient is unable to maintain her attention for a determined period of time on a task. She becomes easily distracted**.

h. Concentration: (Please consider claimant's education and age)

1. Ask claimant to recite the months of the year and the days of the week backwards. **Patient failed when saying the months of the year.**
2. Subtract in series of 3 and 7. **Patient was unable to subtract neither 3 nor 7 from 100**.

i. Intellectual Functions (e.g. arithmetic calculations, general information). Patient was not able to answer all the simple mathematical calculations nor the general information ones.

j. Judgment: (impulsivity, understanding of situation and response) If necessary, give examples. The patient acknowledges her condition and asks for help.

k. Insight: **Poor**

10. Current functioning: Include patient's independence in performing the following: (if supervision is needed describe extent)

a. Activities of daily living: (e.g. household tasks, taking public transportation, using telephone, etc.) **Patient does not do any type of household chore, she does not wash clothes, iron, cook, buy groceries, watch television nor read the newspaper. She does not use public transportation. She maintains herself withdrawn. She does not like to be in crowds or groups.**

b. Social functioning: Include examples of disturbed behavior, ability to initiate social contacts, to communicate, interact, and participate in group activities). **Patient is unable to maintain social contacts, which makes her communication with others very poor. She does not belong to groups**.

c. Stress tolerance: (Deterioration and Decompensation: Describe any episodes of decompensation or deterioration that have occurred in situations similar to those that might be encountered at work, e.g. situations requiring decisions, scheduling, attendance, completing tasks, interaction with supervisors): **Patient deteriorates and decompensates when faced with the slightest stressor and does not tolerate any kind of supervision.**

d. Task Persistence: (Describe with samples, the claimant's ability to focus attention on and persist at tasks and/or complete a normal workday without interruption). **Patient is unable to keep her attention focused on the simplest task. She does not do any type of work.**

e. Any episode of panic attacks? Give the frequency and duration. **Patient does not present panic attacks**.

10. Therapy: Indicate current therapy and response, medications, dosage, compliance, side effects, including the ability to engage in competitive employment: **Patient is currently taking doral 15 mgs. H.s., paxil 20 mgs. B.i.d., tranxene 7.5 mgs. T.i.d. Even so, the response to medication is very poor. As a result of**

this, she has no competitive work ability and the same is completely null. Her disability is total and permanent.

11. Diagnosis:

AXIS I - **MAJOR DEPRESSIVE DISORDER**
AXIS II - **71.09**
AXIS III - **SEE PAST MEDICAL HISTORY, QUESTION 5, PAGE 2 OF THIS QUESTIONNAIRE**
AXIS IV - **CODE 5**
AXIS V - **GAF 50-41 POOR FUNCTIONALITY**

12. Prognosis: **POOR**

13. Ability to handle funds **X Yes** __No __Unknown

Knowing that any one making a false statement of representation of a material fact for use in determining a right payment under the Social Security Act, commits a crime punishable under federal Law, I certify that the above statements are true.

6244	[signed]
LICENSE NO.	PHYSICIAN'S SIGNATURE
PSYCHIATRIST	MAY 20, 1998
SPECIALTY	DATE

United States District Court
For the District of Puerto Rico
-CERTIFIED-
To be a correct translation prepared by:
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the United States Courts

24 DE AGOSTO DE 1998

EVALUACION PSIQUIATRICA

NOMBRE:	KENIA M. CINTRON PARRILLA
NUMERO S.S.:	584-66-4691
DIRECCION:	P.O. BOX 232
	NAGUABO, P.R. 00718
EDAD:	42 AÑOS
ESTADO CIVIL:	CASADA
EDUCACION:	CUARTO AÑO UNIV. – B.A. QUIMICA
OCUPACION:	FARMACEUTICA

HISTORIAL DE ENFERMEDAD:

Comencé a ver la paciente kenia m. Cintrón el 4 de febrero de 1998. Es muy importante señalar que comenzó a tratarse la condición emocional en ese año luego de que se afectó las manos y dedeos, al grado que perdió la fuerza y la movilidad de las manos. Le daban muchos calambres como farmacéutica escribía mucho. Fue a ver un fisiatra. Este la refirió a una evaluación neurológica. Se le diagnosticó carpal tunnel syndrome bilateral y nervios pinchados en ambas piernas. Se le reportó al f.s.e. y fue puesta en descanso. No regreso a trabajar.

Las condiciones físicas de esta paciente le han desencadenado una condición emocional severa incapacitante. Ambas condiciones incapacitan a la paciente laboralmente de formal total y permanente para trabajo remunerativo alguno.

La paciente presenta actualmente los siguientes síntomas que persisten:

SINTOMATOLOGÍA:

1. Aislamiento
2. No realiza tareas
3. Tristeza
4. Llanto frecuente
5. Minusvalía
6. Olvidos frecuentes
7. Enlentecimiento psicomotor
8. Irritabilidad
9. Pobre intromisión
10. Pérdida del interés en actividades diarias
11. Pérdida del interés en vida sexual
12. Pobre control de impulsos
13. Pobre empatía
14. Pérdida de funciones cognoscitivas e intelectuales
15. Pobre socialización
16. Ideas de muerte recurrente
17. Ideas negativas
18. Dolor de cuello, manos y piernas
19. Miedos irracionales
20. Múltiples quejas somáticas
21. Malestar psicológico

EXAMEN MENTAL

1. Apariencia – aparenta edad cronológica, poco cooperadora, pobre cuido personal, sin prendas, enlentecimiento psicomotor. Luce enferma.

2. Actitud y comportamiento – evita la mirada, cabizbaja, se observa muy ansiosa. Triste, deprimida.

3. Lenguaje – escaso flujo y producción, presenta bloqueos mentales. Presenta tiempo de respuesta prolongado.

4. Pensamiento – presenta ideas de muerte recurrente, pensamientos negativos.

5. Afecto – entre deprimido, triste y angustiado.

6. Orientación – orientada en persona y lugar, desorientada en tiempo.

7. Memoria – severamente menoscabada.

8. Atención y concentración – afectada, paciente no tiene la habilidad de mantener la atención, se distrae con facilidad.

9. Funciones intelectuales y cognitivas – paciente no pudo realizar algunas de las pruebas matemáticas más sencillas.

10. Juicio – pobre

11. Actividades diarias – paciente no hace ningún tipo de tarea en el hogar.

12. Funcionamiento social – no se relaciona con las demás personas adecuadamente, no pertenece a grupos, no tiene la habilidad de iniciar contactos sociales. No asiste a actividades.

DIAGNÓSTICOS:

EJE I DEPRESIÓN MAYOR SEVERA

EJE II 71.09

EJE III CARPAL TUNNEL SYNDROME BILATERAL, RADICULOPATÍA C5,C6-C7, RADICULOPATÍA L5-S1 BILATERAL, T.O.S., MYOSITIS CERVICAL

EJE IV CÓDIGO 5

EJE V GAF 50-41 POBRE FUNCIONABILIDAD

RESUMEN DE TRATAMIENTO:

Esta paciente esta siendo medicada con prosom 2MGS. H.S., PAXIL 20 MGS B.I.D., TRANXENE 15 MGS. ½ T.I.D. y TRANXENE 15 MGS 2 H.S.. Aún así la respuesta a la medicación es muy pobre. La paciente continua con sintomatología activa. Asiste con regularidad a visitas de psicoterapia. Su última cita fue el 16 de julio de 1998.

COMENTARIOS:

La incapacidad de esta paciente es total y permanente para realizar trabajo alguno. Su incapacidad es una total, irreversible y progresiva. Por lo que me reafirmo en lo dicho en mi anterior informe con fecha de 20 mayo/98. Esta paciente no ha podido regresar a desempeñar trabajo alguno.

/s/ Héctor L. Torres
DR. HÉCTOR L. TORRES
PSIQUIATRA
LIC. 6244

CERTIFIED TRANSLATION

AUGUST 24, 1998

PSYCHIATRIC EVALUATION

NAME:	KENIA M. CINTRON PARRILLA
S.S. NUMBER:	584-66-4691
ADDRESS:	PO BOX 232 NAGUABO, P.R. 00718
AGE:	42 YEARS OLD
MARITAL STATUS:	MARRIED
EDUCATION:	4TH YEAR UNIVERSITY-B.A. CHEMISTRY
OCCUPATION:	PHARMACIST

HISTORY OF ILLNESS:

I began seeing the patient, kenia m. Cintron, on february 4, 1998. It is very important to point out that she began treatment of the emotional condition that year, after her hands and fingers became affected, to the point that she lost strength and mobility in her hands. She had many cramps. As a pharmacist, she wrote a lot. She went to see a physiatrist. The latter referred her for a neurological evaluation. She was diagnosed bilateral carpal tunnel syndrome and pinched nerves in both legs. She reported to the s.i.f. and was ordered to rest. She did not return to work.

This patient's physical conditions have unleashed a disabling severe emotional condition. Both conditions disable the patient totally and permanently from performing any remunerative work whatsoever.

The patient currently presents the following persistent symptoms:

SYMPTOMATOLOGY:

1. Withdrawal
2. Does not perform tasks
3. Sadness
4. Frequent crying
5. Feelings of worthlessness
6. Frequent forgetfulness
7. Psychomotor retardation
8. Irritability
9. Poor introspection
10. Loss of interest in daily activities
11. Loss of interest in sexual life
12. Poor control of impulses
13. Poor empathy
14. Loss of cognitive and intellectual functions
15. Poor socialization
16. Recurrent thoughts of death
17. Negative ideas
18. Pains in the neck, hands and legs
19. Irrational fear
20. Multiple somatic complaints
21. Psychological malaise

MENTAL EXAMINATION

1. Appearance – represents her chronological age, not very cooperative, poor personal care, no jewelry, psychomotor retardation, looks ill.

2. Attitude and behavior – avoids eye contact, downcast, seems very anxious, sad, depressed.
3. Language – poor flow and production, presents mental blocks. Presents prolonged response time.
4. Thought – presents recurrent thoughts of death, negative thoughts.
5. Affect/Mood – a mixture of depressed, sad and anguished.
6. Orientation – oriented in person and place, disoriented in time.
7. Memory – severely impaired.
8. Attention and concentration – affected, patient is unable to maintain her attention, is easily distracted.
9. Intellectual and cognitive functions – patient was unable to perform some of the simplest mathematical calculations.
10. Judgment – poor
11. Daily activities – patient does not perform any type of household chore.
12. Social functioning – she does not interrelate adequately with other people, does not belong to groups nor does she have the ability to initiate social contacts. She does not attend activities.

DIAGNOSES:

AXIS I	MAJOR DEPRESSIVE DISORDER
AXIS II	71.09
AXIS III	BILATERAL CARPAL TUNNEL SYNDROME, RADICULOPATHY C5, C6-C7, BILATERAL RADICULOPATHY L5-S1, T.O.S., CERVICAL MIOSOTIS

AXIS IV CODE 5

AXIS V GAF 50-41 POOR FUNCTIONABILITY

SUMMARY OF TREATMENT

This patient is being medicated with prosom 2 MGS. H.S., PAXIL 20 MGS. B.I.D., TRANXENE 15 MGS. ½ T.I.D. AND TRANXENE 15 MGS 2 H.S. EVEN SO, the response to the medication is very poor. The patient continues with active symptomatology. Attends psychotherapy sessions regularly. Her last appointment was on july 16, 1998.

COMMENTS

This patient's disability is total and permanent impairing her from performing any remunerative work whatsoever. Her disability is total, irreversible and progressive; therefore, i reaffirm what i stated in my previous report dated may 20, 1998. This patient has not been able to return to perform any work whatsoever.

[Signed]_____

DR. HECTOR L. TORRES

PSYCHIATRIST

Lic. 6244

United States District Court

For the District of Puerto Rico

-CERTIFIED-

To be a correct translation prepared by:

/s/ Annie Flores

Certified Court Interpreter

Administrative Office of the

United States Courts

28 DE JUNIO DE 1999

EVALUACION PSIQUIATRICA

NOMBRE: KENIA M. CINTRON PARRILLA
NUMERO S.S.: 584-66-4691
DIRECCION: P.O. BOX 232
NAGUABO, P.R. 00718
EDAD: 42 AÑOS
ESTADO CIVIL: CASADA
EDUCACION: CUARTO AÑO UNIV – B.A QUIMICA
OCUPACION: FARMACEUTICA

HISTORIAL DE ENFERMEDAD:

Comencé a ver la paciente kenia m. Cintrón parrilla el 4 de febrero de 1998. Es muy importante señalar que comenzó a tratarse la condición emocional en ese año luego de que se afectó las manos y dedeos, al grado que perdió la fuerza y la movilidad de las manos. Le daban muchos calambres como farmacéutica escribía mucho. Fue a ver un fisiatra. Este la refirió a una evaluación neurológica. Se le diagnosticó carpal tunnel syndrome bilateral y nervios pinchados en ambas piernas. Se le reportó al f.s.e. y fue puesta en descanso. No regreso a trabajar.

las condiciones físicas de esta paciente le han desencadenado una condición emocional severa incapacitante. ambas condiciones incapacitan a la paciente laboralmente de formal total y permanente para trabajo remunerativo alguno.

La paciente ha desarrollado los siguientes síntomas:

1. Tristeza
2. Pérdida vida íntima

3. Pobre empatía
4. Pobre control impulsos
5. Ideas muerte recurrente
6. Múltiples quejas somáticas
7. Minusvalía
8. Enlentecimiento psicomotor
9. Miedos irracionales
10. Malestar psicológico intenso
11. Irritabilidad
12. Pérdida int. En act. Diarias
13. Ideas negativas
14. Dolor cuello, manos y piernas
15. Llanto frecuente
16. Olvidos frecuentes
17. Aislamiento
18. Pobre socialización
19. Pérdida de funciones cognoscitivas e intelectuales

EXAMEN MENTAL

1. Apariencia – aparenta edad cronológica, poco cooperadora, pobre cuido personal, sin prendas, enlentecimiento psicomotor, luce enferma.
2. Actitud y comportamiento – evita la mirada, cabizbaja, se observa muy ansiosa. Triste, deprimida.
3. Lenguaje – presenta bloqueos mentales, flujo y producción escaso, presenta tiempo de respuesta prolongado.
4. Pensamiento – presenta pensamientos negativos, ideas de muerte recurrente.
5. Afecto – entre deprimido, triste y angustiado.

6. Orientación – orientada en persona, lugar y desorientada en tiempo.

7. Memorias – severamente menoscabadas.

8. Atención y concentración – afectadas, paciente no tiene la habilidad de mantener la atención, se distrae con facilidad.

9. Funciones intelectuales y cognitivas – paciente no pudo realizar algunas de las pruebas matemáticas más sencillas.

10. Juicio – pobre

11. Actividades diarias – paciente no hace ningún tipo de tarea en el hogar.

12. Funcionamiento social- no se relaciona con las demás personas adecuadamente, no pertenece a grupos, no tiene la habilidad de iniciar contactos sociales. No asiste a actividades.

DIAGNÓSTICOS:

EJE I	DEPRESIÓN MAYOR SEVERA
EJE II	71.09
EJE III	CARPAL TUNNEL SYNDROME BILATERAL, RADICULOPATÍA C5-C6-C7, RADICULOPATÍA L5-S1 BILATERAL, T.O.S., MYOSITIS CERVICAL, MRI SPASM, SPARS WITH DISC DESSICATION AT MULTIPLE LEVELS C3-C7, BULGING DISC C4-C5 COMPRESSING DURAL SAC AND BULGING C5-C6, FIBROMA UTERINO + QUISTE EN AMBOS OVARIOS.
EJE IV	CÓDIGO 5
EJE V	GAF 50-41 POBRE FUNCIONABILIDAD

RESUMEN:

Esta paciente esta siendo medicada con PROSOM 2MG. H.S., PAXIL 20 MG BID, TRANXENE 15 MG. ½ TID, TRANXENE 15 MG HS. Aún así la respuesta a la medicación es muy pobre. La paciente continua con sintomatología activa. Asiste con regularidad a visitas de psicoterapia. Su última cita fue el 17 de junio de 1999.

COMENTARIOS

la incapacidad de esta paciente es total y permanente para realizar trabajo remunerativo alguno. su incapacidad es una total, irreversible y progresiva. por lo que me reafirmo en lo dicho en mi anterior informe con fecha de 24 agosto 98. esta paciente no ha podido regresar a su trabajo.

/s/ Hector L. Torres
DR. HECTOR L. TORRES
PSIQUIATRA
LIC. 6244

CERTIFIED TRANSLATION

JUNE 28, 1999

PSYCHIATRIC EVALUATION

NAME:	KENIA M. CINTRON PARRILLA
S.S. NUMBER:	584-66-4691
ADDRESS:	PO BOX 232
	NAGUABO, P.R. 00718
AGE:	42 YEARS OLD
MARITAL STATUS:	MARRIED
EDUCATION:	4TH YEAR UNIVERSITY-B.A. CHEMISTRY
OCCUPATION:	PHARMACIST

HISTORY OF ILLNESS:

I began seeing the patient, kenia m. Cintron, on february 4, 1998. It is very important to point out that she began treatment of the emotional condition that year, after her hands and fingers became affected, to the point that she lost strength and mobility in her hands. She had many cramps. As a pharmacist, she wrote a lot. She went to see a physiatrist. The latter referred her for a neurological evaluation. She was diagnosed bilateral carpal tunnel syndrome and pinched nerves in both legs. She reported to the s.i.f. and was ordered to rest. She did not return to work.

This patient's physical conditions have unleashed a disabling severe emotional condition. Both conditions disable the patient totally and permanently from performing any remunerative work whatsoever.

The patient has developed the following symptoms:

1. Sadness
2. Loss of intimate life
3. Poor empathy
4. Poor impulse control
5. Recurrent thoughts of death
6. Multiple somatic complaints
7. Sense of worthlessness
8. Psychomotor retardation
9. Irrational fears
10. Intense psychological malaise
11. Irritability
12. Loss of interest in daily activities
13. Negative ideas
14. Pain in neck, hands and feet
15. Frequent crying
16. Frequent forgetfullness
17. Withdrawal
18. Poor socialization
19. Loss of cognitive and intellectual functions

MENTAL EXAMINATION

20. Appearance – represents her chronological age, not very cooperative, poor personal care, no jewelry, psychomotor retardation, looks ill.
21. Attitude and behavior – avoids eye contact, downcast, seems very anxious, sad and depressed.
22. Language – presents mental blocks, poor flow and production, prolonged response time.
23. Thought – presents negative thoughts, recurrent thoughts of death.

24. Affect/mood – a mixture of depressed, sad and anguished.
25. Orientation – oriented in person and place, disoriented in time.
26. Memory – severely impaired.
27. Attention and concentration – affected, patient is unable to maintain her attention, is easily distracted.
28. Intellectual and cognitive functions – patient was unable to do some of the simplest mathematical calculations.
29. Judgment – poor
30. Daily activities – patient does not perform any type of household chore.
31. Social functioning – she does not interrelate adequately with other people, does not belong to groups nor does she have the ability to initiate social contacts. She does not attend activities.

DIAGNOSES

AXIS I	MAJOR DEPRESSIVE DISORDER
AXIS II	71.09
AXIS III	BILATERAL CARPAL TUNNEL SYNDROME, RADICULOPATHY C5, C6-C7, BILATERAL RADICULOPATHY L5-S1, T.O.S., CERVICAL MIOSOTIS, CERVICAL MRI SPASM, SPARS WIT DISC DESSICATION AT MULTIPLE LEVELS C3-C7, BULGING DISC C4-C5 COMPRESSING DURAL SAC AND BULGING C5-C6, UTERINE FIBROMYOMA + CYST IN BOTH OVARIES.
AXIS IV	CODE 5

AXIS V GAF 50-41 POOR FUNCTIONABILITY

SUMMARY OF TREATMENT

This patient is being medicated with PROSOM 2 MGS. H.S., PAXIL 20 MGS. B.I.D., TRANXENE 15 MGS. ½ T.I.D. AND TRANXENE 15 MGS 2 H.S. even so, the response to the medication is very poor. The patient continues with active symptomatology. Attends psychotherapy sessions regularly. Her last appointment was on june 17, 1999.

COMMENTS

This patient's disability is total and permanent impairing her from performing any remunerative work whatsoever. Her disability is total, irreversible and progressive; therefore, I reaffirm what i stated in my previous report dated june 17, 1999. This patient has not been able to return to her work

[SIGNED]_____
DR. HECTOR L. TORRES
PSYCHIATRIST
LIC. 6244

United States District Court
For the District of Puerto Rico
-CERTIFIED-
To be a correct translation prepared by:
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

SOCIAL SECURITY ADMINISTRATION

Refer to: 584-66-4691

Office of Hearing and Appeals
416 Ponce De León Ave.
Union Plaza Bldg. Rm. 501
Hato Rey, Puerto Rico 00918
Telephone: (787) 766-5006
Date: Jul 15, 1999

Kenia M. Cintrón
P.O. Box 232
Naguabo, P.R. 00718

NOTICE OF DECISION – FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision Is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another office may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeal Council.

How To File An Appeal

To file an appeal you or your representative must request the Appeals Council to review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the Appeals Council, Office of Hearings and Appeals, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

Time To File An Appeal

To file an appeal, you must file your request for review within **60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5 days period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time to Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider with your request for review.

How An Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal regulations, Title 20, Chapter III, Part 404, Subpart J.

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The council may review you case for any reason. It will review your case if one of the reasons for review listed in our regulations exists. Section 404.970 of the regulations lists these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal And No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

If You Have Any Questions

If you any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (787) 852-5315. Its address is Oriental Federal Center 2nd FL., 75 Tejas Avenue, Humacao, P.R. 00791.

RAMON E QUIÑONES
Administrative Law Judge

Enclosures

cc: Juan A. Hernández
PO Box 367059
San Juan, P.R. 00936

SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF	**CLAIM FOR**
	Period of Disability and
Kenia M. Cintrón	Disability Insurance Benefits
(Claimant)	
_____	584-66-4691
(Wage Earner)	(Social Security Number)

I approve the fee agreement between the claimant and her representative subject to the condition that the claim result in past-due benefits.

My determination is limited to whether the fee agreement meets the statutory condition for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the fee agreement.

/s/ Ramón E. Quiñones
RAMÓN E. QUIÑONES
Administrative Law Judge
Jul 15 1999
Date

SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

DECISION

IN THE CASE OF	CLAIM FOR
	Period of Disability and
Kenia M. Cintrón	Disability Insurance Benefits
(Claimant)	
_____	584-66-4691
(Wage Earner)	(Social Security Number)

PROCEDURAL HISTORY

This case is before the Sdministrative Law Judge on the request for hearimg filed by the claimant on September 15, 1998, who is dissatisfied with the previous determination finding that she is not disabled. After reviewing the documentary evidence, it is concluded that a fully favorable decision can be issued without the necessity of a hearing. The claimant is represented by Juan A. Hernandez, Attorney at Law. The Administrative Law Judge has considered all the documents identified in the record as exhibits.

ISSUES

The issues in this case are whether the claimant is under a disability as defined by the Social Security Act and if so, when her disability commenced, the duration of the disability, and whether the insured status requirements of the Act are met for the purpose of entitlement to a period of disability and disabilitya insurance benefits (Section 216 and 223 of the Social Security Act, as amended).

EVALUATION OF THE EVIDENCE

After a thorough evaluation of the entire record, it is concluded that the claimant has been disabled since June 18, 1997, and met the insured status requirements of the Social Security Act on that date and thereafter, through December 31, 2002.

Social Security Regulations No. 4 establish a sequential evaluation for the assessment of disability claims. The first step in this sequence is to determine whether the claimant is working and engaging in substantial gainful activity (20 CFR 404.1520 (b)). The record shows that the claimant has not engaged in substantial gainful activity since the alleged onset date.

The next step is to whether the claimant's alleged impairment are severe (20 CFR 440.1520 (c)). A severe impairment is one that more than minimally limits the claimant's capacity to perform basic work related activities such as walking, standing, sitting, lifting, carrying, pushing or pulling, handling, seeing, hearing, speaking, understanding, carrying out and remembering simple instructions, using judgment, responding adequately to supervision, co-workers and usual work situations and dealing with changes in routine work setting (20 CFR 404.1521).

The record shows that the claimant alleges she cannot work due to severe pain in the back, hands, and lower extremities. She also alleges emotional condition. The clinical data shows that the in July 1997, underwent EMG of upper extremities positive for right carpal tunnel syndrome. On September 29, 1997, the same study indicates bilateral carpal tunnel syndrome. In October 1997, she had Ct Scan

of the cervical spine that reveals narrowing of the emerging recess at the right side at C6-C7. On March 17, 1998, she underwent MRI of the cervical spine that shows bulge disc at C4-C5 level compressing the dural sac. On March 23, 1998, she had EMG/NCV. The first shows bilateral C5-C6 root lesion. The NCV indicates bilateral carpal tunnel syndrome and thoracic outlet syndrome. On March 24, 1998, a Doppler study of upper extremities was performed and the same shows bilateral thoracic outlet syndrome. On March 25, 1998, another EMG was done positive for bilateral L5-S1. The clinical findings of record shows positive Tinel, Adson, and Phalen's signs. She has decreased hands strength bilaterally. There is evidence of spasm and tenderness in the cervical and lumbar region. The pain in cervical area radiates to shoulders and arms. The straight leg raising test is positive. She range of motion limitation of the cervical and lumbar spine. (See note from the State Insurance Fund (SIF), report of Dr. Evelyn Rodríguez, CE and reports of Dr. Tomás Hernández, treating neurologist).

The record indicates that she has developed an affective disorder. In December 1997, she was examined at SIF and the report shows anxiety disorder and depression. The claimant was complaining of tension, crying spells, sadness, insomnia, and lack of interest. The claimant was observed depressed (See notes from SIF). On June 11, 1997, she was examined by Dr. Fabre, with diagnosis of major depression. The claimant was observed with psychomotor retardation. The mental status exam revealed emotional liability, disturbance of mood and affect, emotional withdrawal, sleep disturbances, appetite disturbances, decrease energy,

feelings of worthlessness, and difficulty for concentration (See report of Dr. Ricardo Fabre, private psychiatrist).

The claimant began treatment with Dr. Hector L. Torres, psychiatrist, on February 4, 1998, who diagnosed her severe major depression. The mental status examination indicates crying spells, sadness, psychomotor retardation, insomnia, isolation, blockings, sad affect, depress mood, impaired memory, decreased attention and concentration, conserved judgment, poor insight, and marked limitations on her capacity for daily activities, social functioning, stress tolerance, and task persistence (See reports of Dr. Torres, treating psychiatrist).

The claimant has a combination of impairments, which does not meet or equal the degree of severity defined in the Listing of Impairments, Appendix 1, Subpart P, of Regulations No. 4. However, the combination is severe and significantly reduces the claimant's capacity to perform basic work related activities such as prolonged standing, walking, climbing, stooping, bending, raising, arms, above shoulders level, pushing, pulling, lifting and carrying no more than 10 pounds occasionally, responding adequately to coworkers and supervisors, dealing with changes in a routine work setting, dealing with people, meeting production demands of competitive working environment.

The undersigned is convince that the record as a whole supports a very restricted residual functional capacity (RFC); physical and mentally. Physically, the uncontroverted medical findings of record support the claimant's allegations of pain. The record shows that the claimant has been treated for impairments capable of producing the signs and symptoms typical of severe pain.

The evidence does establish a determinable basis for the claimant's complaints to the degree of severity alleged. The claimant's alleged limitations resulting from his symptom, as contained in the record, are fully supported and consistent with the record as a whole (SSR 96-7p).

Mentally, the claimant's major depression, would not allow the performance of work related activities during a full working day. It is the claimant's capacity to persist during eight hours that must be evaluated. A person with severe mental impairment cannot persist if the attention, concentration, judgment, ability to react to physical and social environment, and the capacity to tolerate stress, are affected. In a competitive working environment, the presence of these factors is necessary in order to accomplish the production quota. These social production factors are reported as limited. Besides, a predictable working behavior must reasonably be maintained in areas of attendance, production, consistency, appearance, and alertness. These areas of maximum work capacity are the first to be impacted in the presence of a severe mental disorder. If these limitations are added to the claimant's physical status, her ability to function is totally restricted.

Section 404.1527 (d) (2) (ii), of the Regulations No. 4, states that when the treating source has reasonable knowledge of your impairments we will give the source more weight than we would give it if it were from a none treating source. In the present case the medical evidence from the treating source(s) clearly supports the claimant's allegations of disability. Accordingly, controlling weight is given to the treating's physician(s) report(s) regarding the presence of signs and symptoms, diagnoses, clinical

findings, response to treatment, residual functional capacity assessment and prognosis.

Once the claimant has established that she has a severe impairment affecting more than a minimal her capacity to do basic work activities, the Commissioner must proceed to the next step in the sequential evaluation process, which is whether or not she can do her past relevant work (PWR) (20 CFR 404.1521, SSR 85-28, SRR 96-3p).

The claimant was 41 years old on the date her disability began (20 CFR 404.1563). The claimant has college degree education (20 CFR 1564). The claimant has a past relevant work experience as quality control assurance representative. Her past relevant work is considered light and skilled (20 CRF 404.1567, 404.1568).

Since this is an on the record decision, the undersigned have not observed the claimant. However, her subjective complaints of pain and emotional distress, as alleged in the record are consistent with the medical evidence. Avery v. Secretary of HHS, 797 F2d 19 (1st Cir. 1986) and Social Security Ruling 96-7P. The claimant's maximum capacity to work has been reduce to less than full range of sedentary work. This capacity is further reduced by severe nonexertional limitations. This is well sustained by the record as a whole. In view of these considerations the claimant cannot return to her PRW.

Next in the disability evaluation process, is whether the claimant can perform any other jobs within he national economy. At this point of the sequential evaluation it is necessary to consider the claimant's vocational factors and residual past relevant experience (20 CFR 404.1561 and 404.1569). If the claimant had the capacity to perform the

full range of sedentary work, Rule 201.28, Table No. 1, indicates a finding of not disabled in view of her age, education, and past work experience. If the capacity to work is limited to less than full range of sedentary exertion, then section 201.00(h), of Regulations No. 4, mandates a finding of disabled.

Considering the claimant's additional nonexertional limitations within the framework of the above-cited section, she cannot be expected to make a vocational adjustment to work which exist in significant numbers in the national economy.

The claimant has been under a disability as defined by the Social Security Act and Regulations since June 18, 1997 (20 CFR 404. 1520 (f)).

FINDINGS

After consideration of the entire record, the Administrative Law Judge makes the following findings:

1. The claimant met the insured status requirements of the Act on June 18, 1997. The claimant has not performed any substantial gainful activity since June 18, 1997 and she is insured through December 31, 2002
2. The claimant's impairment which when combined are considered to be "severe" under the Social Security Act are: Bilateral C5-C6, C6-C7, radiculopathy, bilateral L5-L1 radiculopathy (root lesion), bilateral carpal tunnel syndrome, thoracic outlet syndrome, bulging annulus fribrosus C4-C5, C5-C6, and major depression.
3. The claimant's impairments do not meet or equals in severity the appropriate medical findings contained in the 20 CFR Part 404, Appendix 1 to Subpart P (Listing of Impairments).

4. The claimant's subjective complaints are found to be credible in terms of frequency and intensity.
5. The claimant's impairment(s) prevent her from lifting and carrying no more tan 10 pound occasionally and coping with the and stress of a completive working environment.
6. The claimant is unable to perform her past relevant work on a sustained basis.
7. The claimant was 41 years old on the day disability began, which is defined as a younger individual. The claimant has a college degree.
8. Based upon the claimant's residual functional capacity, and vocational factors, there are no jobs existing in significant numbers which she can perform. This finding is based upon the guidelines of Section 201.00 (h) 20 CFR Part 404, Appendix 2, to Subpart P.
9. Considering the claimant's additional nonexertional limitations within the framework of the above-cited section, she cannot be expected to make a vocational adjustment to work which exist in significant numbers in the national economy.
10. The claimant has been under disability as defined by the Social Security Act and Regulations since June 18, 1997 (20 CFR 404.1520 (f)).

DECISION

Based on the Title II application filed on December 12, 1997 the claimant is entitled to a period of disability beginning on June 18, 1997, and to disability insurance benefits under sections 216 (i) and 223, respectively, of the

Social Security Act, and the claimant's disability has continued through at least the date of this decision.

/s/ Ramón E. Quiñones
RAMÓN E. QUIÑONES
Administrative Law Judge
Jul 15 1999
Date

OHA PSYCHIATRIC REVIEW TECHNIQUE FORM

NAME: Kenia M. Cintron	SSN: 584-66-469
Assessment is for:	Current Evaluation
Administrative Law Judge's Signature	Date:
/s/ Ramón E. Quiñones	Jul 15 1999

II. Medical Summary

A. Medical Disposition (s): RFC Assessment Necessary (i.e., a severe impairment is present which does not meet or equal a listed impairment

B. Based Upon Category (ies): 12.04

III. Reviewer Notes (does not apply to OHA)

IV. DOCUMENTATION OF FACTORS THAT EVIDENCE THE DISORDER (Evaluation of the existence of a sign or symptom CLUSTER or SYNDROME for the Listed Disorder.)

Present	Absent		
[ ]	[x]	A. 12.02	Organic Mental Disorders
[ ]	[x]	B. 12.03	Schizophrenic, Paranoid and other Psychotic Disorders
[x]	[ ]	C. 12.04	Affective Disorders
[ ]	[x]	D. 12.05	Mental Retardation and Autism
[ ]	[x]	D. 12.06	Anxiety Related Disorders
[ ]	[x]	D. 12.07	Somatoform Disorders
[ ]	[x]	D. 12.08	Personality Disorders
[ ]	[x]	D. 12.09	Substance Addiction Disorders

C. **12.04 Affective Disorder** – disturbance of mood, accompanied by a full or partial manic or depressive syndrome, as evidence eat least by one of the following:

PRESENT-ABSENT-INSUFICIENT EVIDENCE

1. [x] [ ] [ ] Depressive syndrome characterized by at least four of the following:
   a. [x] Anhedonia or pervasive loss of interest in almost all the activities, or
   b. [ ] Appetite disturbance with change in weight, or
   c. [x] Sleep disturbance, or
   d. [x] Psychomotor agitation or retardation, or
   e. [x] Decreased energy, or
   f. [x] Feelings of guilty or worthlessness, or
   g. [x] Difficulty concentrating or thinking, or
   h. [ ] Thoughts of suicide, or
   i. [ ] Hallucinations, delusions or paranoid thinking
2. [ ] [x] [ ] Manic syndrome characterized by at least three of the following:
   a. [ ] Hyperactivity, or
   b. [ ] Pressures of speech , or
   c. [ ] Flight of ideas, or
   d. [ ] Inflated self-esteem, or

e. [ ] Decreased need for sleep, or

f. [ ] Easy distractibility, or

g. [ ] Involvement in activities that have a high probability of painful consequences which are not recognized, or

h. [ ] Hallucinations, delusions or paranoid thinking

3. [ ] [x] [ ] Bipolar syndrome with history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

4. [x] [ ] [ ] Other: Severe back pain and hand weakness.

V. RATING OF IMPAIRMENT SEVERITY

A. "B" CRITERIA OF THE LISTINGS

THE FOLLOWING FUNCTIONAL LIMITATIONS (WHICH APPLY TO PARAGRAPH B OF LISTINGS 12.02-12.04 AND 12.06-12.08 AND PARAGRAPH D OF 12.05) EXIST AS A RESULT OF THE INDIVIDUAL'S MENTAL DISORDER(S).

NOTE: ITEMS 3 AND 4 BELOW ARE MORE THAN MEASURES OF FREQUENCY. DURATION AND EFFECTS OF THE DEFICIENCIES (ITEM 3) OR EPISODES (ITEM 4) ARE DISCUSSED IN THE DECISION.

Listing(s) under which the items below are being rated: 12.04

FUNCTIONAL LIMITATION AND DEGREE OF LIMITATION

1. Restrictions of Activities of Daily Living:

None[ ] Slight[ ] Moderate[ ] **Marked***[**x**] Extreme[] Insuff Evid[ ]

2. Difficulties in Maintaining Social Functioning

None[ ] Slight[ ] **Moderate**[**x**] Marked*[ ] Extreme[] Insuff Evid[ ]

3. Deficiencies of Concentration, Persistence or Pace Resulting in Failure to Complete Tasks in a Timely Manner (in work setting or elsewhere):

Never[ ] Seldom[ ] **Often**[**x**] Frequent*[ ] Constant[ ] Insuff Evid[ ]

4. Episodes of Deterioration or Decompensation in Work or Work-Like Settings Which Cause the Individual to Withdraw from that Situation or to Experience Exacerbation of Signs and Symptoms (which may Include Deterioration of Adaptive Behaviors):

Never[ ] Seldom[ ] Often[ ] Frequent*[ ] Constant[ ] **Insuff Evid**[**x**]

* Degree of limitation that satisfies the Listings: Extreme, Constant and Continual also satisfy that requirement.

B. Summary of Functional Limitation Rating for "B" Criteria.

No. of Functional Limitations Manifested at the Listing Level: [**1**]

(The number must be at least 2 to satisfy the requirements of paragraph B in Listings 12.02, 12.03, 12.04, and 12.06 and paragraph D in 12.05; and at least 3 to satisfy the requirements in paragraph B in Listings 12.07 and 12.08.)

Social Security Administration
Retirement, Survivors, and Disability Insurance

Important Information

Phone: (787) 852-5315
Office Hours: 8:30-4:00
12/05/01
Claim Number: 584-66-4691

MS KENIA CINTRON
PO BOX 232
NAGUABO, PR 00718

Dear MS CINTRON:

We recently reviewed the evidence in your Social Security disability claim and find that your disability is continuing. Here is some important information about working that explains some of the terms we use.

- Your claim will be reviewed from time to time to see if you are still eligible for benefits based on disability or blindness. When you claim is reviewed, you will be contacted if there is any question as to whether your eligibility continues.

If you are receiving Supplemental Security Income payments, any decision about that claim will be sent to you in a separate notice.

Things to Remember

You must tell us right away about any changes that may affect your benefits. If you don't you may have to repay any benefits you are not due. Let us know if:

- You went to work since your last report or your return to work in the future (no matter how little you earn); or

- You already reported your work, but your duties or pay have changed. (Remember to keep records of your work and earnings such as pay statements from your employer.); or
- You star paying for work expenses related to your disability (for example, you may need special transportation) or the amount you paid for such expenses changes or you no longer pay for such expenses. (Remember to keep proof of payment for any work expenses.); or
- Your doctor says your condition has improved (even if you don't work now); or
- You apply for, start getting, or have a change in the amount of worker's compensation or another public benefit.

We will use this information to decide if your health problems still meet our rules, if we must stop your payments because of work, or if we must change your payment amount.

If You Disagree With The Decision

If you disagree with the decision, you have the right to appeal. We will review your case again and consider any new facts you have. A person who did not make the first decision will decide your case.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you received this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason if you wait more than 60 days to ask for an appeal.

- You have to ask for an appeal in writing. We will ask you to sign Form SSA-561-U2, called "Request for Reconsidertion." Contact one of our offices if you want help.

If You Want Help With Your Appeal

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal service if you qualify.

There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal. If you get some one to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect.

If You Have Any Questions

If you have any questions, please let us know. You may also call, write, or visit any social Security office. If you do contact an office, please have this letter with you. It will help us answer your questions.

Enclosure (s):
SSA Pub. No. 05-10095

Exhibit No. 3

Certified and Express Mail Number:
7002 0860 0008 6597 3670

Via Fax: (317) 433-8292

September 26, 2002

To: Mr. John J. Purcell
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, Indiana 46285
Tel. (317) 276-3081
Fax. (317) 433-8295

From: Kenia M. Cintrón Parrilla
PO Box 388
Naguabo, PR 00718-0388

Re: Status of Notice of Claim for the Lilly Extended Disability Benefit

On August 16, 2002, I submitted you my claim for the Lilly Extended Disability Benefits which included a list of the documentation regarding my medical case: medical reports, medical studies and evaluations, determinations of *Corporación del Fondo del Seguro del Estado* (worker's compensation), and the social securuty administration approval and further revision.

This week, I received a letter from my lawyer who includes a letter sent to him by the Lilly's lawyers in Puerto Rico. The letter says, "In order for the Committee within Lilly to complete its ongoing evaluation, an independent medical evaluation by both a neurologist and a psychiatrist

is desirable, and would be helpful for the evaluation of Ms. Cintron's request. ". Attached I am sending you copy of the letter sent by the Lilly's lawyers in Puerto Rico. My lawyer recommends that I shall contact you in order to clarify if there is any specific request that is missing from my claim.

In my claim, I submitted independent medical evaluations from about seventeen different doctors that certify my medical condition. My claim also included updated information. In my opinion, there are more than enough evidence, evaluations, documentation, data, etc to make a decision. Even thought, is any information missing from the claim that I submitted in August 16, 2002? If yes, what information **is required** in order to complete my claim?

If you have any doubt or need any other information you can contact me at the above address or at:

Tel. (787) 874-0025.

Sincerely,

/s/ Kenia M. Cintrón

Kenia M. Cintrón Parrilla

Social Security Number: 584-66-4691

Number of pages including this cover sheet: 3

SCHUSTER USERA & AGUILO LLP
Counsellors at Law
PO Box 363128, San Juan, Puerto Rico 00936-3128
GREGORY T. USERA ELECTRONIC MAIL
DIRECT DIAL (787) 765-4841 GUSERA@SUAS.NET

September 23, 2002

VIA FAX
Lcdo. Jesús Hernández Sanchez
Suite 806-810
First Federal Savings Bldg. Parada 23
Santurce. Puerto Rico 00909

Re: Kenia M. Cintrón v. Lilly

Dear Mr. Hernandez .Sanchez:

In order for the Committee within Lilly to complete its on going evaluation, an independent medical evaluation by both a neurologist and a psychiatrist is desirable, and would be helpful for the evaluation of Ms. Cintron's request.

Following are the names of three doctors in each discipline. After your client selects one in each discipline, we will contact them and arrange for the evaluation at Lilly's expense. The results of the evaluation will be submitted directly to Dr. Felix Matos of Lilly del Caribe.

Discipline	Name	Telephone
Neurologist	Carlos Luciano, Clínicas Las Américas	767-2248
Neurologist	William Filipi, Auxilio Mutuo	763-1171

Neurologist	Lidgia Vives, Hospital Metropolitano	763-4553
Psychiatrist	José Franceschini, Calle Santa Cruz, Bayamón	269-2001
Psychiatrist	José Rodríguez Santiago, Calle Arzuaga, Río Piedras	764-3031
Psychiatrist	Jorge Suria Colón, Calle Aguas Buenas, Bayamón	787-4640

I will appreciate your contacting me after you have consulted with your client so I may arrange for the visit with the selected medical providers. Thank you in advance for your prompt attention to this matter.

Very truly yours,

/s/ Gregory T. Usera
Gregory T. Usera

cc: Félix Matos
Charles Grandy
Lizette Vélez-Rivé

Exhibit No. 4

SCHUSTER USERA & AGUILO LLP
Counsellors at Law
PO Box 363128, San Juan, Puerto Rico 00936-3128
GREGORY T. USERA ELECTRONIC MAIL
DIRECT DIAL (787) 765-4841 GUSERA@SUAS.NET

October 2, 2002

VIA FAX
Lcdo. Jesús Hernández Sanchez
Suite 806-810
First Federal Savings Bldg. Parada 23
Santurce. Puerto Rico 00909

Re: Kenia M. Cintrón v. Lilly

Dear Mr. Hernandez .Sanchez:

Pursuant to paragraph seven (7) of the Settlement Agreement executed between the parties, the Lilly Benefit Plan Review Committee ("Committee") had 45 days after your client provided the relevant information to render a decision. Mrs. Cintrón submitted information received on August 19, 2002, and tha period would thus expire October 3.

I have been requested to notify you of the need for a 30 days extension for the Committee to render a decision. This short extension will allow your client to exercise one of two options outlined in my letter of September 23: to Submit to an independent medical evaluation ("IME") as suggested, and allow the physicians to render reports to Dr. Felix Matos: or decline the suggestion to submit to an IME: Leaving the matter to be decided based solely on the

information your client submitted. Since the Committee does not control the timetable for Mrs. Cintrón to submit to IME and for the doctors to render reports to Dr. Felix Matos, this extension is due to matters beyond the Committee's control.

Addressing issues that Mrs. Cintrón raised in her correspondence of September 26 to Mr. John J. Purcell and as required under paragraph seven of the Settlement Agreement, an additional, independent neurological evaluation is requested because there appears to be several areas of poor correlation between Ms. Cintrón's reported symptoms and the diagnostic studies provided by Mrs. Cintrón. Ms. Cintrón has complained of severe upper arm pain, neck pain and back pain for several years. The severity of her symptoms, however, are poor correlated with the diagnostic studies performed between 1998-2002. X-rays, CT scans, MRI scans, Bone Scans and Doppler flow studies suggest mild degenerative disc disease without significant flow obstruction or nerve compression. Such findings are not inconsistent with mild symptoms and/or the aging process, in addition, an emotional disease component is suggested by some evaluators, but the extent of the disease is unclear as well as what effective interventions have been offered and Ms. Cintrón compliance with such recommendations. It is the lack of expected correlation between objective diagnostic studies and Ms. Cintrón's claimed disability that require the Benefit plan Review Committee to seek an independent evaluation of both the physical and psychological health of Ms. Cintrón.

As describe in the terms of the Lilly Extended Disability Plan, any claimed benefit requires that the claimant be

found to be disabled. Under Section 2.01(a)(5) of the Lilly Extended Disability Plan, the term "Disability" is defined as "the inability of an Employee t engage, fro remuneration or profit, in any occupation commensurate with the Employee's education, training, and experience, provided that the inability results from an illness or accidental bodily injury that requires the Employee to be under the regular care of a Licensed Physician. "The information sought will directly address this area of inquiry and assist the Benefit Plan Review Committee in applying the standards described above to Ms. Cintrón's request fro benefits.

I would appreciate your client's election of the preferred option promptly, or within 10 days at latest, so that the arrangements can be made with the doctors, and time ia allowed for them to render a report, and the Committee to consider them. After it receives the IME information from the doctors, the Committee expects to render a decision at the next regularly schedule meeting, which it expects will take place within 30 days from October 3, 2002.

Thank you in advance for your attention to this matter

Very truly yours,

/s/ Gregory T. Usera
Gregory T. Usera

cc: Félix Matos
Charles Grandy
Lizette Vélez-Rivé

Exhibit No. 5

Express Mail Number: EJ467781724US
Fax Number: (317) 433-8295

October 12, 2002

To: John J Purcell
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, Indiana 46285
Tel. (317) 276-3081
Fax. (317) 433-8295

From: Kenia M. Cintrón Parrilla
P.O. Box 388
Naguabo, P.R. 00718

I am sending the latest medical study report related to my claim for the Lilly Extended Disability Benefit as follow:

1. Electromyographic Examination and Nerve Conduction Velocities Upper Extremities – 10/11/02
2. Non-Invasive Vascular Division Arterial Doppler Evaluation of Upper Extremities-10/8/02

These reports can help the Lilly Benefit Plan Review Committee in the evaluation of my claim.

If you have any doubt or need more information you can contact me at: Telephone: (787) 874-0025

Sincerely,

/s/ Kenia M. Cintrón

Kenia M. Cintrón Parrilla

Social Security Number: 584-66-4691

Number of pages including the cover page: 11

CENTRO DE TERAPIA FÍSICA SANTA ROSA
Ave. Aguas Buenas – Bloque 10 Núm. 2, Santa Rosa
Bayamón, Puerto Rico Tels. 780-4292 / 740-4290
Dr. José Eddie Bisbal

File No. 14252

Name Kenia M. Cintrón Parrilla
Address Tel.
Age 46 Sex F Plan Med Status
Nearest Relative Referred by
Admitted 10/11/2002 Discharged
Diagnosis
B.P. Pulse Weight
Precaution

---

46 y/o female pte with hx of chronic progressive severe cervical + upper back pain with onset few years ago (March 97) with radiation to both upper extremities, with numbness and weakness and pains on them. Headaches. Numbness on hands.

Severe frequent headaches.

PE: Neck: Very severe spasm, severe pain, limited bilateral rotation.

Extrem: Ψ C_{5-6} sens. Normal DTR'S
ROM determination: Full
Muscle strength: G to G (-)
Tinnel's + Phalen's: POS bilat

ELECTROMYOGRAPHY EXAMINATION

Date

Patient Referring Physician

Address Age Status

Problem:

UPPER EXTREMITIES

Muscle	Roots	Innervation	Insertional Activity	Spontaneous Fibrillation
Rt. Trapezius	C_2, C_3, C_4	S.Accesory N.	Normal	None
Rt. Deltoid	C_5, C_6	Axiliary N	Increased ↓	Positive waves
Rt., Biceps brachi	C_5, C_6	Musculo-cutaneous N.		
Rt. Triceps	C_6, C_7	Radial N.		
Rt. Brachio-radialis	C_5, C_6	Radial N.	Increased ↓	Positive waves
Rt. Pronotor Teres	C_6, C_7	Madian N.		
Rt. 1st Dorsal Interosel	C_8, T_1	Ulnar N.	Normal	None
Rt.Opponens Pollicis	C_8, T_1	Median N.	↓	↓
Rt. Abductor Digiti quinti	C_8, T_1	Ulnar N.		
Rt. C_2, C_3, C_4, C_5, C_6, C_7, C_8, T_1 Paraspinal Muscles				

UPPER EXTREMITIES

Muscle	Roots	Innervation	Fasciculation	Motor Unit Action Potential
Rt. Trapezius	C_2, C_3, C_4	S.Accesory N.	None	Normal biphasic
Rt. Deltoid	C_5, C_6	Axiliary N	↓	Biphasic + polyphasic progressing to a mixed sum
Rt. Biceps brachi	C_5, C_6	Musculo-cutaneous N.		
Rt. Triceps	C_6, C_7	Radial N.		
Rt. Brachio-radialis	C_5, C_6	Radial N.		Biphasic + polyphasic progressing to a mixed sum
Rt. Pronotor Teres	C_6, C_7	Madian N.		
Rt. 1st Dorsal Interosel	C_8, T_1	Ulnar N.	None	Normal biphasic
Rt. Opponens Pollicis	C_8, T_1	Median N.	↓	Normal biphasic
Rt. Abductor Digiti quinti	C_8, T_1	Ulnar N.		
Rt. C_2, C_3, C_4, C_5, C_6, C_7, C_8, T_1 Paraspinal Muscles				

UPPER EXTREMITIES

Muscle	Roots	Innervation	Insertional Activity	Spontaneous Fibrillation
Lt. Trapezius	C_2, C_3, C_4	S.Accesory N.	Normal	None
Lt. Deltoid	C_5, C_6	Axiliary N	Increased ↓	Positive waves
Lt., Biceps brachi	C_5, C_6	Musculo-cutaneous N.		
Lt. Triceps	C_6, C_7	Radial N.		
Lt. Brachio-radialis	C_5, C_6	Radial N.	Increased ↓	Positive waves
Lt. Pronotor Teres	C_6, C_7	Madian N.		
Lt. 1st Dorsal Interosel	C_8, T_1	Ulnar N.	Normal	None
Lt. Opponens Pollicis	C_8, T_1	Median N.	↓	↓
Lt. Abductor Digiti quinti	C_8, T_1	Ulnar N.		
Lt. C_2, C_3, C_4, C_5, C_6, C_7, C_8, T_1 Paraspinal Muscles				

UPPER EXTREMITIES

Muscle	Roots	Innervation	Fasciculation	Motor Unit Action Potential
Lt. Trapezius	C_2, C_3, C_4	S.Accesory N.	None	Normal biphasic
Lt. Deltoid	C_5, C_6	Axiliary N	↓	Biphasic + polyphasic progressing to a mixed sum
Lt. Biceps brachi	C_5, C_6	Musculo-cutaneous N.		
Lt. Triceps	C_6, C_7	Radial N.		
Lt. Brachio-radialis	C_5, C_6	Radial N.	None	Biphasic + polyphasic progressing to a mixed sum Normal biphasic
Lt. Pronotor Teres	C_6, C_7	Madian N.		
Lt. 1st Dorsal Interosel	C_8, T_1	Ulnar N.		
Lt. Opponens Pollicis	C_8, T_1	Median N.	↓	Normal biphasic
Lt. Abductor Digiti quinti	C_8, T_1	Ulnar N.		
Lt. C_2, C_3, C_4, C_5, C_6, C_7, C_8, T_1 Paraspinal Muscles				

Other: Positive waves on RT + LT $C_{5\text{-}6}$ paraspinals

NERV CONDUCTION VELOCITIES

	Erbs to Elbow	Elbow to Wrist	Erbs to Wrist	Distal Delay	Sensory
RT. Median N.	_ m/sec	50 m/sec	_ m/sec	4.8	5.2
RT. Ulnar N.	_ m/sec	48 m/sec	_ m/sec	2.4	2.0
LT. Median N.	_ m/sec	49 m/sec	_ m/sec	4.3	4.5.
LT. Ulnar N.	_ m/sec	51 m/sec	_ m/sec	2.8	2.3.
F waves	LT. 25.5	28.5.	RT. 26.0.	29.3.	

Others:

Radial		Motor	Sens
RT	54m/s	3.0.	2.4
LT	51m/s	2.9.	2.5.

DIAGNOSTIC IMPRESSION:

(1) Findings in EMG highly suggest Bilateral C_{5-6} roots lession

(2) Findings in NCV compatible with bilateral Carpal Tunnel Synd worst on RT side

(3) Findings on F waves compatible with Bilateral Thoracic Outlet Synd

Note: All above findings are worst than previous studies.

/s/ Jose E. Bisbal, M.D

AiiC

Advance Imaging Interventional Center

Non Invasive Vascular Division

Name: Cintrón Parrilla, Kenia M. Date: 10/08/2002

Address: Naguabo, P.R. 874-0025 Age: 46 Yrs

Referring Physician: Dr. Barbara Bustillo González Sex: F

NON-INVASIVE VASCULAR DIVISION

ARTERIAL DOPPLER EVALUATION OF

UPPER EXTREMITIES

History: This is a 46 years old female with suspected thoracic outlet syndrome.

Technique:

Non-invasive testing of upper arterial system for subclavian artery to the digits was performed. Pulse volume recording, Doppler waveform analysis, and PPG's of the arm in different maneuvers to elicit thoracic outlet syndrome were obtained.

Findings:

Right Upper Extremity:

These are normal Doppler signals of the right upper extremity without evidence of suggestions of any significant stenosis.

The continuous wave Doppler waveform and PPG on all different maneuvers demonstrate decrease flow within the subclavian and brachial arteries during the hyperabduction maneuver in keeping with compression at the level of the subclavian artery.

Left Upper Extremity:

These are normal Doppler of the left upper extremity without evidence of suggestion of any significant stenosis.

The continuous wave Doppler waveform and PPG on all the different maneuvers demonstrate decrease flow within the subclavian and brachial arteries during the hyperabduction maneuvers in keeping with compression at the level of the subclavian artery.

IMPRESSION

1. Compression of the subclavian arteries bilaterally during the hyperabduction maneuvers producing decrease flow distally.
2. No evidence of significant stenosis or occlusion by Doppler.

/s/ Delfin Bernal Echeandia
Delfin Bernal Echeandia, MD
Vascular and Interventional Radiologist

/s/
DBE/mcs

Exhibit No. 6

Express Mail Number: EJ467781698US
Fax Number (317) 433-8295

November 13, 2002

To: John J. Purcell
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, Indiana 46285

From: Kenia M. Cintrón
PO Box 388
Naguabo, PR 00718-0388

I am sending the following report related to my claim for the Lilly Extended Disability Benefits:

1- *Certificación Médica* – Nov/06/02 – Dr. Héctor L. Torres Nieves, MD Psychiatrist

The Report will be helpful for the Lilly Benefit Plan Review Committee in the evaluation of my claim.

If you have any doubt or need more information you can contact me at: Telephone (787)874-0025.

Sincerely

/s/ Kenia M. Cintrón
Kenia M. Cintrón Parrilla
Social Security Number: 584-66-4691

Number of pages including the cover page: 3

Hector L. Torres, Nieves, M.D.
Psiquiatra

Ave. Muñoz Marín #53
Humacao, PR 00791
Teléfono 850-3044

6 de noviembre 2002
Kenia M. Cintrón Parrilla
Record: 98-2122
Date Birth: 17 de febrero de 1956
S.S. 584- 66 4691

CERTIFICACIÓN MÉDICA

La paciente Kenia M. Cintrón Parrilla se atiende en mi oficina desde el 4 de febrero 1998. Ha sido vista en varias ocasiones para trabajo alguno debido a sus condiciones físicas y emocionales. Presenta síntomas tales como: ansiedad, melancolía, irritabilidad, olvidos frecuentes, bloqueos mentales, llanto frecuente, aislamiento, malestar psicológico intenso, pobre concentración, perdida de interés actividades diarias, disturbios preceptúales, tristeza, depresión, minusvalía, pérdida de energía, pobre control impulso, insomnio, palpitaciones, explosiones de ira, dolores precordiales, pérdida vida íntima, enlentecimiento psicomotor, perdida funciones cognoscitivas e intelectuales, distractibilidad, mareos frecuentes, múltiples quejas somáticas, pobre empatía.

Paciente aparenta edad cronológica, poco cooperadora, pobre cuido personal, no usa prendas, no espejuelos, luce agudamente enferma, evita la mirada, ansiosa, su flujo y producción son escasos. Presenta tiempo de respuesta prolongado, esta orientada en persona y lugar, desorientada

en tiempo, sus memorias están menoscabadas, su atención y concentración están afectadas. Paciente no tiene la habilidad de mantener la atención, se distrae con facilidad, reconoce su condición y pide ayuda, paciente no ealiza ningún tipo de tarea en su hogar, se mantiene aislada, no visita ni recibe visitas, le molestan los ruidos y no tolera lugares concurridos.

Los diagnósticos de dicha paciente son:

EJE I Depresión Mayor Severa Recurrente

EJE II 71.09

EJE III CTSB, Radiculopatía C5-C6-C7, Bilateral L5-S1 root irritation por Electromyographic Examination del 4/24/02, Myositis Cervical, Disc Bulge C4-C5, Compression of the subclavian arteries bilaterally Axonal Neuropathy of all tested nerves, Polineuropathy de extremidades inferiores por examen Nerve Conduction Examination del 4/24/2002, Spasm, Spurs with Disc Dessication at multiple levels C3-C7, Fibroma Uterino + quiste en ambos ovarios.

EJE IV Código 5

EJE V GAF 50-41 Pobre Funcionabilidad

Dicha paciente esta siendo medicada con Prosom 2mg. HS, Seroquel 100mg 1PO HS, Tranxene 7.5 mg TID, Paxil 10 mg AM. La incapacidad de esta paciente es una total y permanente para trabajo alguno. A la paciente no se le recomienda actualmente que se exponga a evaluaciones de ninguna clase ya que su condición emocional podría llevarla a una crisis que puede llegar desde una depresión severa a profunda hasta una psicosis. Las condiciones emocionales de la paciente son incapacitantes pero son

secundarias a las condiciones orgánicas que incapacitan a la paciente total y permanentemente para realizar trabajo. Estas condiciones orgánicas incapacitantes son las descritas en el EJE III. Ninguna de las condiciones son reversibles ni aún la emocional, son tratables para aliviar algunos de sus síntomas.

/s/ Héctor L. Torres
Héctor L. Torres
Lic. 6244
Psiquiatra

TRANSLATION

Héctor L. Torres Nieves, MD
Psychiatrist

#53 Muñoz Marin Ave.
Humacao, PR 00791
Telephone 850-3044

November 6, 2002
Kenia M. Cintrón Parrilla
Record #: 98-2122
Date of Birth: February 17, 1956
S.S.: 584-66-4691

MEDICAL CERTIFICATION

The patient, Kenia M. Cintrón Parrilla, has been attended in my office since February 4, 1998. She has been seen in several appointments for work-related physical and emotional conditions. She shows symptoms such as: anxiety, melancholy, irritability, frequent forgetfulness, mental blocks, frequent crying, isolation, intense psychological discomfort, poor concentration, loss of interest in daily activities, perceptual disturbances, sadness, depression, mental handicap, loss of energy, poor impulse control, insomnia, palpitations, outbursts of rage, precordial pain, loss of intimate life, psychomotor deceleration, loss of cognitive and intellectual functions, distractibility, frequent dizziness, multiple somatic complaints, poor empathy.

Patient looks her chronologic age, not very cooperative, poor personal care, does not use jewelry, no glasses, looks acutely ill, avoids eye contact, anxious, her flow and production are scarce, shows prolonged time in responding,

is oriented in person and place, disoriented in time, her memories are diminished, her attention and concentration are affected. Patient does not have the ability to maintain the attention, is easily distracted, recognizes her condition and asks for help, patient does not perform any chores at her home, she keeps herself isolated, she neither visits nor receives visitors, noises bother her and she does not tolérate crowded places.

The diagnoses of said patient are:

Axis I Recurrent Severe Major Depression

Axis II 71.09

Axis III CTBS, TOS, Radiculopathy C5, C6, C7, Bilateral L5-S1 roots irritation by Electromyographic Examination on 4/21/02, Cervical Myositis, Disc Bulge C4-C5, Compression of the Subclavian Arteries Bilaterally, Axonal Neuropathy of all tested nerves, Polyneuropathy of inferior extremities by Nerve Conduction Examination Test on 4/24/02, Spasm, Spurs with disc desiccation at multiple level C3-C7, Uterine Fibromyoma + cyst in both ovaries.

Axis IV Code 5

Axis V GAF 50-41 Poor Functioning

Said patient is treated with Prosom 2mg HS, Seroquel 100mg1PO HS, Tranxene 7.5mg TID, Paxil 10mg AM. The work disability of this patient is total and permanent. At the present time, patient is recommended that she not be exposed to evaluations of any kind, since her emotional condition could get lead her to a crisis ranging from a severe depression to a psychosis. The patient's emotional conditions are disabling but are secondary to the organic

conditions that totally disable the patient permanently to perform work. These disabling organic conditions are the ones described in axis iii. None of the conditions are reversible, not even the emotional one, are treatable to relieve some of her symptoms.

/s/ Hector L. Torres
Hector L. Torres
Lic. 6244
Psychiatrist

United States District
For the District of Puerto Rico
-Certified-
To be a correct translation made
and/or submitted by the interested party
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Exhibit No. 7

www.lilly.com **Lilly**

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
U.S.A.

Phone 317 276 2000

October 24, 2002

Ms. Kenia Cintrón
P.O. Box 388
Naguabo, PR 00718-0388

Dear Ms. Cintron:

When your employment with the Eli Lilly and Company terminated, you had 21.250 years of service and therefore are entitled to a deferred service benefit under The Lilly Retirement Plan. You can elect to receive a monthly benefit at age 65 or you can elect to receive an actuarially reduced monthly benefit at the time you would have attained 80 points (your age plus your years of service) had you remained with the company.

Benefits for Single Employees or Married Employees Who Decline Survivor Benefits:

If you are married and you and your spouse decline the survivor protection, or if you are single, your deferred service benefit will be in the form of a single life annuity. You can elect to receive monthly payments for life under either of the following options:

Option 1 – Payment beginning at 65:

You would receive a monthly payment of $1315.38 beginning March 1, 2021, according to the provisions of the retirement plan.

Option 2 - Payment beginning when you have attained the equivalent of 80 points:

You would receive a monthly payment of $447 .23 beginning January 1, 2007, according to the provisions of the retirement plan.

If you choose to commence receiving payment after you have attained 80 points but before age 65, the exact benefit would then be calculated.

A deferred service benefit employee may not elect any other option offered under The Lilly Retirement Plan. Except as set out in this letter, or required by law, no person other than a deferred service benefit employee has any right, title, or interest in any deferred service benefit.

Please contact the company in writing at least 90 days prior to the time you wish to begin receiving deferred services payments. With your written notification please send a copy of your *birth certificate*. It will be your responsibility to keep us to date on address changes, which are required in writing. All payments will be mail to the last known address on our records.

If you have any questions about this program, please do not hesitate to contact Meme Sego (317) 276-2103.

Sincerely,

/s/ John J. Purcell

John J. Purcell

Manager, Employee Benefits

ms

Exhibit No. 8

www.lilly.com **Lilly**

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
U.S.A.

Phone 317 276 2000

December 2, 2002

Ms. Kenia Cintrón
P.O. Box 388
Naguabo, PR 00718-0388

Dear Ms. Cintron:

At its November 13, 2002 meeting, the Eli Lilly and Company Benefits Plan Review Committee (the "Committee") reviewed your written request, dated August 16, 2002 and received August 19, 2002, for benefits under The Lilly Extended "Disability Plan (the "Plan"). Consistent with Plan requirements, the Committee previously notified you twice of thirty day extensions necessary to obtain additional information from you and review your claim. Based on the information provided to the Committee at the time of its meeting, the Committee must deny your request for disability benefits. The Committee was unable to verify your claimed disability and determined that you failed to provide necessary information to support your entitlement to disability benefits as required by the Plan.

As you may be aware, the Plan is a self-funded employee welfare benefit plan, The Plan is a component plan of The

Lilly Employee Welfare Plan and is governed by federal regulation under The Employee Retirement Income Security Act of 1974 ("ERISA"), The Benefit Plan Review Committee is appointed by the Eli Lilly and Company Employee Benefits Committee ("EBC") to assist in reviewing claims and administering, among other plans, The Lilly Employee Welfare Plan and its component plans, including this Plan.

Section 6.02(a) of the Plan requires that you submit proof of your entitlement to disability benefits including: 1) the date on which your disability commenced, 2) the cause of the disability. 3) any available objective medical evidence of the disability. 4) the nature and extent of the disability, and 5) the name and address or the Licensed Physician who is providing regular care for your claimed disability. In addition, section 6..02(b) of the Plan specifically provides, in relevant part, that "The Employee Benefits Committee may require an Employee to undergo examination by a Licensed Physician or vocational expert chosen by the Employee Benefits Committee to determine the extent of any illness or injury for which the Employee makes a claim under the Plan. The Employee Benefits Committee may require an Employee to undergo such examinations as often as is reasonably necessary to determine whether the Employee remains Disabled." Subsection 2.01(a)(5) of the Plan, in relevant part, defines "Disability" as "the inability of an Employee to engage, for remuneration or profit, in any occupation commensurate with the Employee's education, training, and experience, provided that the inability results from an illness or accidental bodily injury that requires the Employee to be under the regular care of a Licensed Physician."

Because the Committee was unable to verify your claimed disability, your request for benefits was denied. Based on the information provided, the Committee concluded that there appear to be several areas of poor correlation between your reported symptoms, including the severity of your symptoms, and the diagnostic studies you provided. In addition, you failed to provide information necessary to verify your claimed disability as requested. By letter dated September 23, 2002, you were requested to undergo an independent medical evaluation by both a. neurologist and a psychiatrist to assist the Committee in completing its ongoing evaluation. After initially agreeing to undergo such evaluations by letter dated October 21, 2002, you did not appear at scheduled appointments and notified Lilly that you would not undergo such independent medical evaluations by letter dated November 8, 2002.

If you wish to seek an appeal of the Committee's decision, you may submit any additional documents, issues and comments in writing to the EBC at the address; below for consideration at its next scheduled meeting.

Eli Lilly and Company
Employee Benefits Committee, Attn: John J. Purcell
Mail Drop Code 1773
Lilly Corporate Center
Indianapolis, TN 46285-1773

For example, if you can provide information demonstrating proof of your entitlement to disability benefits, that evidence could be reviewed. Specifically, you have complained of severe upper arm pain, neck pain and back pain for several years. The severity of your symptoms, however, are poorly correlated with the diagnostic studies

performed between 1998-2002. X-rays, CT scans, MRI scans, bone scans and Doppler flow studies suggest mild degenerative disc disease without significant flow obstruction or nerve root compression. Such findings are not inconsistent with mild symptoms and/or the aging process. In addition, an emotional disease component is suggested by some evaluators, but the extent of the disease is unclear as well as what effective interventions have been offered and your compliance with such recommendations. As you will recall it was the lack of expected correlation between objective diagnostic studies and your claimed disability that prompted the request that you undergo an independent evaluation of both your physical and psychological health.

You or your representative may review pertinent documents considered by the Committee. Any appeal must be received by the EBC within one hundred eighty (180) days of your receipt of this letter.

Should you decide to appeal, the EBC or its authorized representative; will decide the appeal and notify you or your authorized representative of its decision in writing within 45 day following receipt of the written request for review. Following any adverse benefit determination by the EBC on review, you must either submit the controversy to the Court or file a voluntary dismissal "with prejudice as described in the agreement you entered into August 14, 2002 ("Agreement"). The EBC's notification will include, as does this letter, specific reasons for the decision, including references to any pertinent Plan provisions which the decision is based. If the EBC determines that special circumstances require an extension of time for a final

decision to be made, the review period may be extended by an additional 45 days (90 days in total). In that event, the EBC will notify you of the extension prior to the expiration of the first 45-day period, notify you of the special circumstances requiring the extension and the date by which the Plan expects to render a decision, All interpretations, determinations, and decisions of the Employee Benefits Committee as to such an appeal will be final and conclusive. Should the EBC rule in your favor, you will receive disability benefits retroactively to the date you were determined to be first eligible under the Plan as described in the Agreement.

Sincerely,

BENEFIT PLAN REVIEW COMMITTEE

/s/ John J. Purcell

John J. Purcell

Secretary

cc: Jesus Hernandez Sanchez

Exhibit No. 9

Form 480.A

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF THE TREASURY
INFORMATIVE RETURN – INCOME NOT SUBJECT TO WITHHOLDING

TAXABLE YEAR: **2002** DUPLICATE ف AMENDED ف

Payer's Information	Type of Income	Amount Paid
Employer's identification number 98-0167031	1. **Payment for Service Rendered by Individuals**	**$40,000.00**
Name Lilly del Caribe	2. Payment for service Rendered by Corporations and Partnerships	0.00
Address P.O. Box 1198 Carolina, PR 009861198 Zip Code	3. Commissions and Fees	0.00
	4. Rents	0.00

Payee's Information	5. Interest (except IRA)	0.00
Social Security or Employer's identification Number 58-4664691	6. Partnership Distributions (see instructions)	0.00
Name Kenia M Cintron	7. Dividends	0.00
Address PO Box 232 Naguabo, PR 00718 Zip Code	8. Pensions Plan Distributions Not Subject to Withholding	0.00
Bank Account Number	9. Other Payments	0.00
	10. Gross Proceeds	

SEE INSTRUCTIONS ON BACK

TRIPLICATE FOR THE PAYEE'S INCOME TAX RETURN

Exhibit No. 10

Certified Mail Number: 7002 0860 0008 659[illegible]668

Naguabo, PR
Apri.1 30, 2003

To: Mr. John J. Purcell
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, Indiana 46285

From: Kenia. M. Cintron Parrilla
PO Box 388
Naguabo. PR 00718-0388

Re: Request of Information for an Appeal of Adverse Benefit Determination

I am requesting from the Lilly Extended Disability Benefits Committee the following information in order to adequately file an Appeal of Adverse Benefit Determination.

1- the specific reasons for the adverse determination;
2- copy of the reference to the specific provisions of the plan on which the benefits determination is based;
3- a description of addrtiona1 material or information needed to perfect the claims and the reasons such material or information is necessary;
4- copy of a description of the Plan's claim review procedures and the time limits applicable to such procedures, including a statement of claimant's right to bring a civil action under section 502(a) of ERISA following an adverse benefit determination on review;

5- copy of any internal rule, guideline, or protocol relied on making the adverse determination:

6- copy any explanation of the scientific or clinical bases of the determination;

7- copy of any questionnaire, medical form, or medical report to be complete by license physician who is providing the employee with regular care,

8- copy of any other specific information, form, questionnaire. etc, that the Committee may seem necessary to bring and inform me in order to file an appeal,.

If you have any doubt please, contact me at:
Tel. (787) 874-0025

/s/ Kenia M. Cintrón
Kenia M. Cintrón Parrilla
Social Security Number: 584-66-4691

Exhibit No. 11

www.lilly.com **Lilly**

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
U.S.A.

Phone 317 276 2000

June 5, 2002

Ms. Kenia Cintrón
P.O. Box 388
Naguabo, PR 00718-0388

Dear Ms. Cintron:

We are in receipt of your recent fax and letter dated May 29, 2003 requesting an appeal to Eli Lilly and Company's Employee Benefits Committee ("EBC'). We understand that you are requesting that the EBC review the denial by the Benefit Plan Review Committee of your Claim for extended disability benefits. The EBC is next schedule to meet on June 23, 2003 and anticipates reviewing your appeal at that time.

In your May 29 letter, you stated that you have received certain information outlined in your correspondence dated April 30, 2003. The Benefit Plan Review Committee previously provided that information to you by letter dated December 2, 2002. Attached for your reference is a copy of that letter, which includes the information you requested. In addition, the letter specifically describes additional information necessary for consideration of your appeal or in response to the December 2 letter, please provide any

additional information as part of your appeal or in response to the December 2 letter, please provide such information to me on or before June 16, 2003, so that it may be considered by the EBC.

In the meantime, please let me know if you have any questions. The EBC will notify you of its decision as describe in the December 2, 2002[1] letter following its review of your appeal.

Sincerely,

Employee Benefits Committee

/s/ John J. Purcell

John J. Purcell

Secretary

cc: Jesus Hernández Sánchez

[1] This is the same letter herein under Appendix AB identified as Exhibit No. 8.

Exhibit 12

May 29, 2003

To: Eli Lilly and Company
Employee Benefits Committee
Attn: J. Purcell
Mail Drop Code 1773
Tel. (317) 276-3081
Fax. (317) 433-8295

From: Kenia M. Cintrón
PO Box 388
Naguabo, PR 00718-0388

In order to status a Claim for an Appeal of Adverse Benefit Determination process, today, I am sending to you the Notice of Claim for an Appeal of Adverse Benefit Determination and the listed support documentation that supports my claim, by fax. Also, I am sending to your attention the same Notice of Claim for an Appeal of Adverse Benefit Determination, which include the listed of the support documentation, by express mail.

If you have any doubt or need more information you can contact me at the above address or call at tel.:
(787) 874-0025.

Sincerely,

/s/ Kenia M. Cintrón
Kenia M. Cintrón Parrilla
Social Security Number: 584-66-4691

Number of pages including this cover sheet: 72

Express Mail Number: EU 608646967 US
Fax (317) 433-8295

Naguabo P.R
May 29, 2003

To: Eli Lilly and Company
Employee Benefits Committee
Attn. Mr. John J. Purcell
Mail Drop Code 1773
Lilly Corporate Center
Indianapolis, IN 46285-1773

From: Kenia M. Cintron Parrilla
PO Box 388
Naguabo, PR 00718-0388

RE: Notice of Claim for an Appeal of Adverse Benefit Determination

I am filing a Claim for an Appeal of Adverse Benefit Determination. In order to start the claim today, I am sending you information that supports my claim.

On my letter dated April 30, 2003, I requested information from the Lilly Extended Disability Benefits Committee in order to adequately file an Appeal of Adverse Benefit Determination, but up today, I have not received any response from the Committee.

Due to the fact that I have not received from the Committee any information that can help me to file an appeal, I am sending to the Committee's attention the information I think is the correct one as follows:

1- Neurological Questionnaire, dated: Nov. 18, 1997 - Tomas Hernandez M.P.H., M.D. Neurologist; Edif. Médico Santa Cruz, 73 Avenue Santa Cruz, Suite 308, Bayamón, PR 00961~6919; Tel. (787) 786-4125 – pages:6

2- port of Neurologic Evaluation Performed with Patient Kenia M. Cintr6n, dated: August 27,1998 - Tomas Hernandez M.P.H., M.D. Neurologist; Edif. Médico Santa Cruz, 73 Avenue Santa Cruz, Suite 308, Bayamón., PR 00961-6919; Tel. (787) 786-4125 – pages: 3

3- Report of Neurologic Evaluation Performed with Patient Kenia M. Cintron, dated: June 24, 1999 - Tomas Hernandez M.P.H., M.D.. Neurologist; Edif. Médico Santa Cruz, 73 Avenue Santa Cruz; Suite 308, Bayamón, PR 00961-6919; Tel. (787) 786-4125 – pages: 4

4- Report of Neurologic Evaluation Performed with Patient Kenia M. Cintron, dated: April 4, 2001 - Tomas Hernandez M.P.H., M.D. Neurologist; Edif. Médico Santa Cruz, 73 Avenue Santa Cruz, Suite 308, Bayamón, PR 00961-6919; Tel. (787) 786-4125 – pages: 3

5- Certificación Médica, dated: Nov. 6,2002 - Hector L Torres Nieves, M.D. 53 Muñoz Marin Avenue, Humacao, PR 00791; Tel. (787) 850-0791 – pages: 2

6- Neurological Report, dated: Mar.18, 2003, signed Apr. 2, 2003 - Tomas Hernandez M.P.H., M.D. Neurologist; Edif. Medico Santa Cruz, 73 Avenue Santa Cruz. Suite 308, Bayamón, PR 00961-6919; Tel. (787) 786-4125- pages: 26

7- Social Security Administration Notice, Retirement, Survivors and Disability Insurance, Dated: Apr, 25, 2003, Beatrice Dissman Regional Commissioner – pages: 3.

8- Update Report for Kenia M. Cintrón Neurologic Evaluation, dated: May 29, 2003 - Tomas Hernandez M.P.H., M.D. Neurologist; Edif. Medico Santa Cruz. 73 Avenue Santa Cruz. Suite 308, Bayamón, PR 00961-6919; Tel. (787) 786-4125 – pages: 13

If you have any doubt or need any other information please, contact me at the above address or call at:

Tel. (787) 874-0025.

/s/ Kenia M. Cintrón

Kenia M. Cintrón Parrilla

Social Security Number: 584-66-4691

PATIENT'S INFORMATION:
NAME: Kenia M. Cintron Parrilla
SOCIAL SECURITY 584-66-4691
ADDRESS:
PHYSICIAN: Dr. Hernandez
Specialty: Neurology
ADDRESS:
PHONE: (787) 786-4125

NEUROLOGICAL QUESTIONNARIE
(Disorders of Spine)

PLEASE COMPLETE THE FOLLOWING SECTIONS AS APPROPIATE

ONSET OF DISABILITY AND/OR LAST DAY WORKED: **May 1997**

1. Date of first visit: **IX-11-95**. Chief complaints (Summary)

At that time she suffered a cerebral contusion. Later she develop pain in shoulders, arms and lower back reaching the point of disabling her.

2. Significant past history, including date of onset description of symptoms and subsequent course.

Onset the later symptomatology was very gradual and worsened dump her job.

3. Please indicate the date when the condition first imposed limitation on claimant: **May 1997**.

Findings on that date:

She was found to have a bilateral C.T.S., T.O.S., cervical and lumbar radiculopathy.

4. Has surgery been performed or is it planned for the future? ____ Yes, √ **No**

(Please include copies of operative and pathology reports.)

N/A

5. Is there any contraindication to surgery? √ **Yes**, __ No.

If yes, give details

Not indicated yet.

6. Is patient willing to undergo surgery? √ **Yes** __ No.

If no, give reasons:

7. Date of the last examination: **November 17, 1997**

Findings of last examinations: _____

INVOLUNTARY MOVEMENT (specify area)

8. Height (without shoes) **6'3"** Weight **155#**

Range of Motion: Give remaining degrees of motion of involved areas.

		Range of Motion			
a.	Cervical Spine:	Flexion	**20°**	Extension	**20°**
		Rotation	**30°**	Lateral	**20°-20°**
b.	Thoracic:	Flexion	**20°**	Extension	**20°**
		Lateral Flexion	**10°-10°**		
c.	Thoracic:	Flexion	**60°**	Extension	**15°**
		Lateral Flexion	**15°-15°**		

9. Describe the symptoms in term of Nature (character and intensity), location and site of any radiation, precipitating factors, duration and frequency: (Example: Pain, fatigue, shortness of breath, headaches, dizziness, lack of stamina or any other subjective symptomatology):

Constant dwell ache worsened by motion and oscillation of moderate intensity

10. Neurology findings:

a. Motor System:

1. Location of any musclespams: **Neck, shoulder, paraspinal**.

Severity of musclespam: **Moderate**.

The following provides for five categories of muscle power that you can use to indicate severity and the degree of claimant's motor deficit.

1. Trace: Only muscle contraction demonstrated by electrical simulation is present

2. Poor: The person can move the muscle but is unable to complete a full range of motion of the associated joint.

3. Fair: The associated joint is able move throught a full range of motion but the muscle can no resist any external pressure.

4. Good: The associated joint is able to complete a full range of motion and can easily resist moderate external pressure.

5. Good to normal: The associated joint is able to complete a full range of motion and is able to resist any external pressure.

b. Motor deficit present in extremities. Based on the degree of muscle power, please indicate severity. (Scale 1 to 5).

Upper extremity: ___ Right **3** Left **3**

Lower Extremity: ___ Right **4** Left **4**

Specify muscle groups of less than 4 **Loose of grip in both hands**

c. Muscle Tone: Describe any muscle atrophy (include any measurements) **No atrophy**

d. Describe any other abnormality. (e.g. rigidity, bradikinesia, etc.) **None**

e. Ability to walk on heels or toes. She cannot heel, but toes with difficulty.

f. Assistive device: __Yes √ **No**

If this device is necessary explain why: ____-____

11. Reflexes (DRT1-4)

Patellar__	Normal__	Diminished__	Absent__
Achilles__	Normal__	Diminished__	Absent__
Biceps__	Normal__	Diminished__	Absent__
Triceps__	Normal__	Diminished__	Absent__

12. Babinsky: **Absent**
13. Sensory Exam: Any abnormality? __Yes √ **No**

    If yes describe and give location **N/A**
14. Any atrophy including actual circumferential measurement of both, the affected and un affected extremity at state level above and below he knees or elbow. Are sensory abnormalities if any, consistent with other clinical findings? __Yes √ **No**. If No, explain: **N/A**
15. Findings on test for nerve root compression (e.g. Strainght Leg Raising, Lasegue, Etc.) SLR + 45° bilaterally; Positive Adson and Tinel's signs.
16. Describe gait and station and comment if any assistive device is medically required (Example: special shoes, cane, crutches, wheelchair, braces, etc.)

    No gait nor disturbances station disturbances.

17. If anormalities were noted above, have they been persistent/ recurrent? √ **Yes** __No. If yes for how long? **Since 1996**.
18. Laboratory. Give detailed findings of X-ray, EMG, C.T. Scans, M.R.I., Myelography, if available. Include dates: **See attached copies**.
19. Is there any mental complication? (e.g. memory, judgment). Please describe: Yes. The patient was referred to a psychiatrist by the S.I.F.
20. Describe claimant typical daily activities (Example: ability to perform a degree of assistance required for shopping, housework, cooking, driving vehicle ambulatin unassisted, etc. **She starts to be unable to perform such activities**.
21. Treatment and response:
    a. Medications prescribed and dosage: **Relafen 500; Norflex; Zantac**
    b. Response to medications: **Fair**
    c. Do the medications prescribed for patient have side effects which could affect his/her:
        1. Alertness/concentration? **Yes**
        2. Visualacuity? **No**
        3. Produce dizziness/imbalance? **No**
        4. Gastrointestinalsystem? **Yes**
        5. Cardiovascularsystem? **No**
        6. Nervoussystem? **No**
22. Please give a description of your patient's ability to do work relate activities:

    In an 8-hours workday, five days a week, the patient can:

Continuously (with only normal breaks)

Sit 12345678 (hrs) **¾ hour**

Stand 12345678 (hrs) **1 hour**

Walk 12345678 (hrs) **1 hour**

Patient can lift/carry:

	Never	Occasionally (0-30%)	Frequently (33-66%)	Continuously (67-100%)
1-10#	__	__	__	√
11-20#	__	√	__	__
21-25#	√	__	__	__
26-60#	√	__	__	__

	Never	Occasionally	Frequently	Continuously
Bend	√	__	__	__
Stoop	√	__	__	__
Squat	√	__	__	__
Kneel	√	__	__	__
Climb Stairs	__	√	__	__
Crawl	√	__	__	__
Reach Above Shoulders	__	√	__	__
Walk on Uneven Surface	__	__	√	__

23. Can patient use hands for repetitive gripping and manipulation? If not, what are the restrictions:

No. She complains of pain and grip becomes weak.

24. Has patient bee advised to elevated one or both lower extremities for significant amount of time daily? If so, why, and how long? **No**.
25. Does patient requiredaily bedrest? If so, approximately how long? **Not less than 2 hours**.
26. Does patient have problems withstamina and endurance which would interfere with daily activities in work environment? **Yes**.
27. Are there any other restrictions on patient's ability to perform competitive work activities? If so, what are the restrictions? **Mostly emotional now. She is very upset by her disability**.
28. **Diagnosis**: **SIP Cerebral Contuussion**
    Multiple Cervical Radiculopathies
    Lumbar Radiculopathy
    Thoracic Outlet Syndrome, Vasculogenic
    Carpal Tunnel Syndrome
    Chronic Anxiety with Depresison
29. **Prognosis**: **Considered to be very poor in this case. She is now totally disabled to performed nay gainfull activity**.

3707	/s/ Tomás Hernandez
LICENSE NO.	PHYSIACIAN'S SIGNATURE

XI-18-97	DR. TOMÁS HERNÁNDEZ - NEUROLOGY
DATE	PHYSICIAN'S NAME AND SPECIALTY

Tomás Hernández, M.P.H.; M.D.
Neurología
Electroencefalografía
Calle Santa Cruz Núm. 73, Suite 308
Bayamón, P.R. 00961 – Tel. (787) 786-4125

August 27, 1998

Report of Neurologic Evaluation Performed with patient Kenia M. Cintrón Parrilla, Social Security # 584-66-4691. Initial Evaluation: September 11, 1995. Re-evaluations: seen in 17 different occasions, being the last one on August 12, 1998.

HISTORY:

This is the case of a 42 years old dextral housewife and former pharmaceutical industry supervisor who was initially seen due to the head trauma with loss of consciousness. At that time, she was found to have a cerebral contusion that later cleared. But that left her with headaches, dizziness, insomnia and anxiety that persist up to this moment.

During her follow up visits, she also complained of pain in both arms and neck that, on May 31, 1997 forced her to stop working. She also complained of low back pain that radiates to both legs and that added to her disability.

In spite of aggressive conservative therapy by the State Insurance Fund and my office, this lady's condition has deteriorated with a worsening of her symptoms.

Presently, she still complains of headaches, insomnia, dizziness, marked anxiety and depression, together with pain, numbness and weakness of both arms, low back pain

that radiates to both legs and limits considerably her range of motion. Included you will find copies of relevant and confirming studies.

PAST HISTORY:

History of bronchial asthma. Allergic to Percocet and Lorabid. Bilateral salpingoophorectomy done in the past.

NEUROLOGIC EXAMINATION:

I. General:

Well developed, mildly obese female, who looks like stated age. B.P. 110/60; Pulse 68/min,; Weight 147"; Height 63".

Head and Neck - No abnormalities detected, except for those related to the neurologic system.

Thorax and Abdomen - Normal heart sounds. No abdominal masses nor visceromegaly.

Extremities - Normal, except for changes related to the neurologic system.

II. General Cerebral Functions:

Alert, cooperative patient, oriented in all three spheres, well kept and groomed. There are no ideas of reference, illusions nor hallucinations. Shows marked anxiety, and concern about her condition.

III. Specific Cerebral Functions

No agnosia, apraxia nor aphasia.

IV. Cranial Pairs:

No deficit detected in any of the cranial pairs tested.

V. Motor System:

Adequate muscle tone and size. There is no obvious atrophy nor tremors in any of the muscles tested. There is weakness of both hands grip, arms abductors and quadriceps femoris.

VI. Sensory System:

Romberg test is negative. No sensory deficit in any of the modalities tested.

VII. Cerebellar System:

There is no incoordination, ataxia intentional tremors, dysmetria nor dysdiodochocinesia.

VIII. Reflexes:

Deep Tendon - Billaterally and symmetrically present (2+) in the arms and legs.

Superficial - Present.

Pathologic - Absent.

XX. Sings of Root Meningeal Irritation and Nerve Compression:

Negative Hoover, Lasegue's, Kernig's nor Brudzinki's. Tinel's sings are present in both wrists. Adson's maneuvers are positive in both arms. Straight leg raising up to 45°, bilaterally.

XXI. Back and Vertebral Column:

There is mild kyphosis and kyphoscoliosis. Tender spot are present along paraspinal musculature, bilaterally. Moderately severe neck and both shoulders muscles spasms.

Range of Motion of Neck and Back with possible ranges in parenthesis:

Cervical Region: Lateral Flexion: (0-40) R-20 ° ; L- 20 °

	Flexion:	(0-30) 20 °
	Extension:	(0-30) 20 °
	Rotation:	(0-45)
Lumbosacral:	Extension:	(0-20) 10 °
	Lateral Flexion:	(0-20) 10 °
Thoracolumbar:	Anterior Flexion	(0-90) 60 °

DIAGNOSIS IMPRESSION:

Status Post Cerebral Contusion.

Post Concussion Syndrome.

Bilateral Thoracic Outlet Syndrome, vasculogenic and neurogenic.

Bilatral Carpal Tunnel Syndrome.

Cervical Bulging Discs.

Cervical Radiculopathy.

Lumbar Radiculopathy.

Chronic Anxiety Reaction with Depressive Features, reactive.

PROGNOSIS:

Considered to be extremely poor. I consider this patient to be totally and permanently disabled to perform any gainful occupation consistent with her skills and preparation.

/s/ Tomas Henandez

Tomás Hernández, M.D.. M.P.H

TH/rsh

Tomás Hernández, M.P.H.; M.D.
Neurología
Electroencefalografía
Calle Santa Cruz Núm. 73, Suite 308
Bayamón, P.R. 00961 – Tel. (787) 786-4125

June 24, 1999

Report of Neurologic Evaluation Performed with patient Kenia M. Cintrón Parrilla, Social Security # 584-66-4691. initial Evaluation: September 11, 1995. Re-evaluiation: seen in 22 different occasions, being the last one on Juna 14, 1999.

HISTORY:

This is the case of a 43 years old dextral housewife and former pharmaceutical industry supervisor who was initially seen due to the head trauma with loss of consciousness. At that time, she was found to have a cerebral contusion that later cleared. As a sequela to this event, she remained with constant headaches, dizziness, insomnia, anxiety and depression that persist up to this moment.

In the course of her illness, she also complained of pain in both arms and neck that radiates to both hands. She also stated that her back also hurts, and the pain radiates oto both legs. These symptoms forced the patient to quit working on May 31, 1997. this patient was expelled form her position on December 22, 1998 by her employer.

During her extensive evaluation, she was found to suffer of Bilateral Carpal Tunnel Syndrome, Bilateral Thoracic Outlet Syndrome, Lumbar Radiculophathy, Cervical

Radiculophathies, with objective evidence that is included with this report.

Presently, she still complains of headaches, insomnia, dizziness, depressive, anxiety, numbness and pain of both arms and legs that is becoming increasingly worst in spite of rest and conservative management. She also complains of receive onset pain in the chest, that was diagnoses as a Costochondritis.

PAST HISTORY:

History of Bronchial asthma. Allergic to Percocet and Lorabid. Status post Bilateral Salpingoophorectomy.

NEUROLOGIC EXAMINATION

I. General:

Well developed, well nourished female, who looks like stated age. B.P. 120/80; Pulse 72/min.; Weight 152"; Height 63".

Head and Neck - No abnormalities detected, except for those related to the neurologic system. She wears a soft cervical collar constantly.

Thorax and Abdomen - Normal heart sounds. No abdominal masses nor visceromegaly.

Extremities - Normal, except for changes related to the neurologic system.

II. General Cerebral Functions:

Alert, cooperative patient, oriented in all three spheres, well kept and groomed. There are no ideas of reference, illusions nor hallucinations. Shows marked anxiety, depressions and concern about her condition.

III. Specific Cerebral Functions

No agnosia, apraxia nor aphasia.

IV. Cranial Pairs:

No deficit detected in any of the cranial pairs tested.

V. Motor System:

Adequate muscle tone and size. There is no obvious atrophy, weakness nor tremors in any of the muscles tested. Significant loss of grip and fingering strength, abductors of both arms, and both quadriceps.

VI. Sensory System:

Romberg test is negative. No sensory deficit in any of the modalities tested.

VII. Cereberall System:

There is no incoordination, ataxia intentional tremors, dysmetria nor dysdiodochocinesia.

VIII. Reflexes:

Deep Tendon - Billaterally and symmetrically present (2+) in the arms and legs.

Superficial - Present.

Pathologic - Absent.

IX. Sings of Root Meningeal Irritation and Nerve Compression:

Negative Hoover, Lasegue's, Kernig's nor Brudzinki's. Tinel's sings are present in both wrists. Adson's maneuvers are positive in both arms. Straight leg raising up to 45°, bilaterally.

X. Back and Vertebral Column:

There is mild kyphosis, but no kyphoscoliosis nor tender spots. Severe neck and both shoulders muscles spasms.

RANGE OF MOTION OF NECK AND BACK WITH NORMAL RANGES IN PARENTHESIS:

Cervical Region:

Lateral Flexion	- (0-40)	R - 20° ; L - 20 °
Flexion	- (0-30)	20 °
Extension	- (0-30)	20 °
Rotation	- (0-45)	30°, bilaterally

Lumbosacral Region:

Extension:	- (0-20)	10 °
Lateral Flexion	- (0-20)	R-10 ° ; L - 10 °

Thoracolumbar Region:

Anterior Flexion	- (0-90)	60 °

DIAGNOSIS IMPRESSION:

Status Post Cerebral Contusion.

Post Concussion Syndrome.

Bilateral Thoracic Outlet Syndrome, both neurogenic and vasculogenic.

Bilateral Carpal Tunnel Syndrome.

Costochondritis.

Cervical Bulging Discs.

Cervical Radiculopathies.

Lumbar Radiculopathy.

Chronic Anxiety with Depression, situational.

PROGNOSIS:

Considered to be extremely poor. I still consider this patient to be totally permanently disable to perform any gainful occupation.

/s/Tomás Hernández
Tomás Hernández, M.D.

TH/rsh

DISABILITY DETERMINATION PROGRAM
PO Box 71301
San Juan, Puerto Rico 00936-8401
Fax: (787) 250-1689 Tel. (754) 8989 Ext. 2236

March 18, 2003

030318200204

DR. TOMAS HERNANDEZ ORTIZ-00783R
EDIF. MEDICO SANTA CRUZ
73 AVE SANTA ROSA SUITE 308
BAYAMON PR 00961

RE: KENIA M. CINTRÓN RECORD #2002-380
PO BOX 232
NAGUABO, PR 00718

SSN: 584-66-4691

Examiner: LUZ M. VELEZ /TMF

NEUROLOGICAL MEDICAL REPORT
(DISORDERS OF SPINE)

Please answer all the questions relevant to the claimant's condition based on the information available in your records.

1. Date of Treatment: First **IX-11-95** Last **IV-1°-03** Frequency **quarterly**

2. Chief complaints (Summary) **Neck pain, low back pain, pain and numbness on both hands, headaches**.

3. Give history including initial symptoms with dates first experienced and associated findings. **Slowly progressive symptoms that became worst around May 1997**.

4. Indicate the date when the condition first imposed limitation on claimant **May 1997**.

Findings on that date **She was found to have a bilateral C.T.S, T.O.S., cervical and lumbar Radiculopathies all worsened while she worked at former occupation**.

5. Describe subsequent course, including dates and details of any hospitalization; give treatment with date started **She was managed also by the SIF with poor results**.

6. Any surgical procedures performed or it is planned for the future? √ **Yes** __ No. Include copies of operative and pathology reports **See attached copies**.

7. Is there any contradiction to surgery __ **Yes** √ No. If yes give reasons **Planning C.T.S. releases**.

8. Is patient willing to under go surgery? √ **Yes** __ No. If no give the reasons. **N/A**

9. FINDINGS ON LAST EXAMINATION: Height (without shoes) **63"** Weight **190#**

10. Describe symptoms in terms of: Nature (character of pain and intensity); location and sites of any radiation, precipitating factors, duration and frequency. **See pain description**.

11. Neurological findings:

a. Motor System:

1. Location and severity of any muscle spam **Neck, shoulder, upper and lower paraspinal**s.

The following provides for five categories of muscle power that you can use to indicate severity and the degree of claimant's motor deficit.

1. Trace – Only muscle contraction demonstrated by electrical stimulation is present.

2. Poor – The person can move the muscle but is unable to complete a full range of motion of the associated joint.
3. Fair – The associated joint is able to move through a full range of motion but the muscle cannot resist any external pressure
4. Good to normal – The associated joint is able to complete a full range of motion and can easily resist moderate external pressure.

b. Motor deficit present in extremities. Based on the degree of muscle power indicate severity.

(Scale 1 to 5)

	Upper Extremity		Lower Extremity	
	Right	Left	Right	Left
1. Proximal:	**4**	**4**	**3**	**3**
2. Distal:	**3**	**3**	**4**	**4**
3. Shoulder Girdle:	**4**	**4**	**4**	**4**

c. Describe fine an gross coordination of affected extremity (ies). To use upper extremities effectively one must be capable of sustaining such functions as reaching, pushing grasping and fingering to be able to carry out activities of daily living**. Pt. must wear constantly colles splints. She can barely use her hand**.

d. Give examples of functional use of impaired extremity (ies). Examples of inability to perform fine and gross movements effectively. **Objects tend to fall from her hands**.

e. Muscle Tone: Describe any muscle atrophy (include any measurements) **Mild interossi atrophy**.

f. Describe any other motor abnormality (rigidity,, bradikinesia, etc.) **Not present**.

g. Ability to walk on heel or toes **Not at all**.

h. Describe claimant's ability to ambulate effectively (sustain a reasonable walking pace for a sufficient distance to be able to carry out activities of daily living **Pt. can walk for 1 ½ blocks before requiring rest**.

i. Comments on gait and station (includes supine and seated straight leg raising). If an assistive device is used for ambulation, comment on its medical necessity and the patient's ability to walk without it). The patient should be evaluated both with and without the device, unless such testing is contraindicated medically. In the latter instance, reason precluding "without" testing must be specified:

Pt. walks with a rigid spine but bears weight on it.

		Sup	Sit
	R	30°	60°
SLR	L	30°	60°

12. Reflexes (DTR 1-4):

Patellar	__ **Normal**	__ Diminished	__ Absent
Achilles	__ **Normal**	__ Diminished	__ Absent
Biceps	__ **Normal**	__ Diminished	__ Absent
Triceps	__ **Normal**	__ Diminished	__ Absent

13. Babinsky: **Absent**.

14. Sensory Exam: __ Yes √ **No**. If yes, describe and give location **N/A**.

15. Any atrophy including actual circumferential measurements of both, the affected and unaffected extremity at state level above and below the knees or elbows? __ Yes √ **No**.

16. Are sensory abnormalities if any, consistent with other clinical findings? √ Yes __**No**. If no, explain **N/A**.

17. Findings on test for nerve root compression (Straight Leg Raising, Lasegue, etc.) **See above. Positive Tinel's signs ® and Adson's maneuvers**.

18. Describe fully the hand(s) functions, specify grip and fingering strength: **See above**.

19. Describe atrophy of thenar, hypothenar, and /or interossi **See above**.

20. Describe swelling, tenderness pain on motion and range of motion of wrist and fingers: **Not present**.

21. Give details findings of X-Rays, EMG, Myelography, if available. Include dates **See attached copies**.

22. If you patient has displayed any behavior suggestive of significant psychiatric disorder, please describe (with dates) **Yes. She is under active psychiatric care**.

23. Describe claimant's typical daily activities (ability to perform a degree of assistance required for shopping, housework, cooking, etc. **She is unable to performed usual household alone at all**.

24. Treatment and Responses: any surgical procudyre performed? **Conservative. Poor response. Pending C.T.S. releases**.

25. Based on medical findings provided in your report give your medical opinion regarding the individual's ability to do work related physical activities as follows: lifting, carrying, standing, walking, sitting, pushing, pilling, hearing, speaking, handling objects, etc. **she cannot push, pull nor handle objects adequately. She can lift and carry up to 10 pds. She can stand, sit and walk about 20 minutes at a time**.

26. Are there any other conditions significant to recovery?
( ) No (√)**Yes**

27. Diagnosis: **Post Concussion Syndrome**
Thoracic Outlet Syndrome, vasculogenic (B)
Carpal Tunnel Syndrome (B)
Cervical Radiculopathies
Lumbar Radiculopathies
Chronic Anxiety with depression

28. Prognosis: **This patient remains totally and permanently disabled to perform any gainful activity. Her conditions are steadily worsening**.

I ACCEPT TO EVALUATE THIS PERSON FOR SOCIAL SECURITY PURPOSE ( ) YES NO ( )

/s/ Tomas Hernandez	Neurology	3707	IX-02-03
Physician's Signature	Specialty	License Number	Date

DISABILITY DETERMINATION PROGRAM
PO Box 71301
San Juan, Puerto Rico 00936

Name: Kenia M. Cintrón SSN: 584-66-4691

DESCRIPTION OF HAND FUNCTION

	PRESENT Right	PRESENT Left	ABSENT	OBSERVATION
Joint:				
Pain	☐	☐	☐	_____
Tenderness	☐	☐	☐	_____
Swelling	☐	☐	☐	_____
Nodes (Bouchard's, Heberden's):	☐	☐	☐	_____
Changes in pigmentation (color, temperature):	☐	☐	☐	_____
Contractures:	☐	☐	☐	_____
Sensory changes (pinprick, vibration, touch):	☐	☐	☐	_____
Amputations:	☐	☐	☐	_____
Deformities:	☐	☐	☐	_____
Atrophy:	☐	☐	☐	_____
Tremors:	☐	☐	☐	_____

Specify ability to do the following:

	ABLE Right	ABLE Left	LIMITED Right	LIMITED Left	NOT ABI E Right	NOT ABI E Left
Grip	☐	☐	☐	☐	☒	☒
Grasp	☐	☐	☐	☐	☒	☒

Pinch	ف	ف	ف	ف	√	√
Finger tapping	ف	ف	ف	ف	√	√

	ABLE		LIMITED		NOT ABLE	
	Right	Left	Right	Left	Right	Left
Opposition of fingers:	ف	ف	ف	ف	√	√
Bottom shirt:	ف	ف	ف	ف	√	√
Pick up a coin	ف	ف	ف	ف	√	√
Write	ف	ف	ف	ف	√	√

ف No hand limitations. Explain: _____

MUSCULAR STRENGTH (0-5): Right Hand **315**
Left Hand **315**

	Right Hand		Left Hand	
Tinel Test	√**Positive**	فNegative	√**Positive**	فNegative
PhalenTest	√**Positive**	فNegative	√**Positive**	فNegative

Comment on the ability to perform functions with the hands in a sustained manner: **Unable to**

Examination of hands performed on: **IV-01-03**

Condition as described has been present since: **1997**

Dr. T. Hernandez	/s/ T. Hernandez	IV-02-03
Physician's Name	Signature	Date

Disability Determination Program
Po Box 71301
San Juan, Puerto Rico

GAIT DESCRIPTION

NAME: Kenia Cintrón SSN: 584-66-4691

We need complete description of claimant's gait. Please answer the following questions:

1. Is the gait: ☐Normal ☐Antalgic?
   ☐Protecting one leg: ☐Rt ☐Lt leg
   ☑**With a rigid spine**
2. Does the patient: ☐limp? Favoring: ☐Rt ☐Lt leg
   ☐Drag a leg due to weakness? ☐Rt ☐Lt leg
   ☑**Just keep he leg rigid but bears weight on it**?
   Comments: _____
3. Strength at lower extremities: Right: **4/5** Left: **4/5**. Is there atrophy present? ☐Yes ☑**No**.
   Location and measurements: _____
4. Are any of these findings present which alter gait? ☐Ataxia ☐Spasticity ☐Involuntary movements ☐lack of balance ☐lack of coordination: ☐Rt ☐Lt leg ☐Unstable joint ☐Rigid tone ☐Flaccid tone
   Comments: **None**.
5. Does the patient use: ☐Cane: ☐Rt ☐Lt hand ☐Orthopedics shoes ☐Shoe lift ☐Crutches ☐Wheelchair ☐AFO (assistive foot orthotic) ☐ Rt ☐Lt foot ☐Prosthetic limbs ☐Rt ☐Lt leg Comments: **None**.
6. Did you examine patient's gait without assistive device? ☐Yes ☐No ☑**N/A**

7. Did you examine patient's gait with prosthesis in place? ف Yes ف No √ **N/A**
8. Did a physician prescribe assistive device or prosthesis? √ **No** ف Yes. If so, please indicate physician's name:__
9. Describe gait while using orthopedic shoes of lift: ف Normal ف Abnormal. Explain: **N/A**.
10. Describe gait using prosthetic limb.
    ف Normal ف Abnormal. Explain: **N/A**.
11. Any problem at stump area? ف No ف Yes. Explain: **N/A**
12. Is the cane considered necessary all the time and in all types of terrain? √ **No** ف Yes. Why? _____
13. Does the patient use walls or require someone's assistance for support? ف **No** √ **Yes**. If support is necessary, does it means that he/she needs some kind of assistive device? ف **No** ف Yes. Explain: **At times**.

Office days/hours: Mon √ Tue √ Wed √ Thu √ Fri_ Sat_

/s/ T. Hernandez — IV-02-03

Physician's Signature — Date

Dr. T. Hernandez — 786-4125

Physician's name — Telephone/Fax

DISABILITY DETERMINATION PROGRAM

PO Box 71301
San Juan, Puerto Rico 00936-8401
Fax: (787) 250-1689 Tel. (754) 8989 Ext. 2236

March 18, 2003

030318200204

DR. TOMAS HERNANDEZ ORTIZ-00783R
EDIF. MEDICO SANTA CRUZ
73 AVE SANTA ROSA SUITE 308
BAYAMON PR 00961

RE: KENIA M. CINTRÓN RECORD #2002-380
PO BOX 232
NAGUABO, PR 00718

SSN: 584-66-4691

Examiner: LUZ M. VELEZ /TMF

QUESTIONER FOR PAIN DESCRIPTION

DESCRIBE THE SYMPTIONS IN TERM OF :

1. Nature (sharp pain, dull ache) **Dull ache**.
2. Intensity **Moderate to severe**.
3. Location **Neck, shoulder low back**.
4. Sites of any radiation **To all extremities**.
5. Duration **Almost constant**.
6. When did this patient first experience pain. 1995
7. Was the onset associated with the event (e.g. injury) √**Yes** __No.
   If yes, specify **She had an accidental fallen**.

CURRENT PRECIPITATING/AGGRAVATING FACTORS

8. What brings on the symptoms and/or makes it worse (e.g. activity, movement, environmental condition?) **Activity**.
9. If related to exertion, what level/kind of exertion produces or aggravates symptoms? **Mild to moderate**.
10. State current frequency and duration of symptoms desite treatment. **Almost constant**.

Treatment and response to treatment

11. a. Medication **She cannot take most medications due**
    b. Name and dosage **to liver involvement**.
    c. How long under this medication **N/A**.
    d. Effectiveness of medication: how quickly and completely does medication relieves symptoms? **None is effective**.
    e. Any side effect from medication? **See above**.
    f. Other treatment modalities (e.g. TENS, whirpool, physical therapy, rest, brace): Type: -.
    g. How long with this treatment? -.
    h. Effectiveness of treatment (how quickly and completely does treatment relieve symptoms? -.

IMPACT OF SYMPTOMS ON WORK ACTIVITIES AND USUAL DAILY ACTIVITIES

12. Describe the impact of symptoms on the person's ability to perform work related activities (standing/walking, lifting, carting, sitting) **See herein report**.
13. Describe the person's usual daily activities (household chores, socialization, recreation, using public transit, concentrating and completing tasks) **See herein report**.

EMOTIONAL COMPLICATIONS

14. Has this person develop any emotional complications as a result of his/her symptoms (e.g. depression, anxiety)? √**Yes** __No. If yes, describe **See herein report**.
15. Does patient have any mental condition secondary to pain? **No**.
16. Date patient last seen? **IV-01-03**

I ACCEPT TO EVALUATE THIS PERSON FOR SOCIAL SECURITY PURPOSE ( ) YES NO ( )

3707	/s/ Tomas Hernandez	Neurology	IX-02-03
License Number	Physician's Signature	Specialty	Date

JAN PIERRE ZEGARRA, M.D., F.A.C.S.
Cirugía de Mano y Microcirugía de extremidades
(Hand Surgery and Extremities Microsurgery)
Plaza San Francisco
Ave. De Diego 201
Suite 201
Suite 31, San Juan, PR 00927-5832
Tels. 758-5034/763-5670

A (To): Dr. Tomás Hernández FECHA (Date:): 2/20/03
Nombre Del Paciente (Patient's Name): Kenia M. Cintrón

HALLAZGOS, DIAGNOSTICO Y/O RECOMENDACIONES:
(Findings, Diagnostic and/or Recommendations:)

Our patient has failed to improve to conventional treatment including C. Tunnel injection | Skelexin | Neurontin.

Having Bilateral CDarpal Tunnel Syndrome | Fiber Tenosynovitis | Cervical Radiculopathy I recommend her surgery for C. Tunnel releases one hand at a time.

D/L Skelexin + Neurontin (tap injection doses) "..."and Ultracet 1 tab q 6h + Medrol Dose pack + recommended Dr. Gerena (pain specialist) for epidural cervical blocks.

AGRADEZCO LA CORTESIA DE ESTE REFERIDO
(I appreciate the courtesy of this referral.)
ATENTAMENTE,
(Attentively,)

/s/ Jan Pierre Zegarra
Jan Pierre Zegarra M.D.
Lic. 4763

APR 01 2003

COSTAL SPINE SPECIALIST
Paul Zak, MD
Orthopedic Surgeon
Board Certified

COMPREHENSIVE SPINE CONSULTATION

13211 Walsingham Road
Largo, Florida 33774
Comprehensive Spine Consultation

Phone (72)7 596-8900

PATIENT: Kenia Cintron
AGE: 47

DATE: 03/20/03
DOB: 02/17/56

REFERRED BY: Walter Pedersen, M.D.
CONSULTING PHYSICIAN: Paul J. Zak, M.D.

REASON FOR CONSULTATION: Pain, stiffness, numbness and weakness in upper and lower extremities, neck, and back. She has additional complains of headaches, dizziness, ear numbness and a sensation of swollen hands, arms, legs and feet.

HISTORY OF PRESENT ILLNESS: This is a 47-year-old woman who has the above complaints. She lives in Puerto Rico. She has been evaluated by numerous physicians and has an extensive workup for her problems. She has been primarily under Dr. Hernandez, a neurologist.

The patient has a history of anon the job injury in 1995. She was working for a pharmaceutical company as a supervisor and spent a great deal of time on the computer. She began complaining of neck pain, pain in both arms with numbness as well as back pain. Her symptoms were

intermittent but became much more severe in 1997. She was evaluated and found to have bilateral carpal tunnel syndrome as well as thoracic outlet syndrome. A thoracic outlet syndrome was confirmed not only electrophysiologically but also through vascular studies. The patient ultimately was disabled through social security in approximately 1998. Upon further workup, she was also noted to have lumbar radiculopathy symptoms as well as carpal tunnel syndrome that was considered to be related to her occupation. Unfortunately for her, symptoms have gradually worsened over time. She has had multiple electrodiagnostic studies from 1997 on. She has had multiple imaging studies including: MRI of the cervical spine and CT scan of the cervical spine in 1998 and 1997 respectively. She has had a bone scan in April 2002 showing mild degenerative disease inn the left shoulder, wrist, several phalangeal joints of both hands, hips, fist metatarsal phalangeal joint of both feet and slight increased uptake in the vertebral column. Most recent electrodiagnostic studies of the lower extremities were in April 2002 and compatible with L5/S1 nerve root irritation as well as significant axonal sensory neuropathy. MRI of the lumbar spine from April 2002 shows transitional level with no evidence of degenerative or discogenic disease in the lumbar spine. Cervical MRI from 03/12/02 shows loss of normal cervical lordosis and normal C2/3, C4/5 and C7/T1 levels. C4/5, C5/6 and C6/7 have very small disc bulges with no significant central canal stenosis or neuro foraminal stenosis. More recent electrodiagnostic studies in October 2002 were suggestive of bilateral C5/6 root lesion and also finding compatible with bilateral carpal tunnel syndrome worse on the right. Findings were also

compatible with bilateral thoracic outlet syndrome with findings worse than on previous studies.

She has been offered surgery by a hand surgeon to release the carpal tunnel bilaterally. She has also been told by the neurologist that she should seek spine surgical opinion regarding her cervical spine and lumbar spine.

She feels that the degree of her pain is in about 8 to 10 on the average. She has mechanical neck and back pain symptoms. They are increase with coughing, sitting, standing and walking or general activity. She denies any bowel or bladder dysfunction.

PAST MEDICAL HISTORY: Depression related to her chronic pain and diabetes since 2001.

PAST SURGICAL HISTORY: Appendectomy, hysterectomy and oophorectomy in 1999.

DRUG ALLERGIES: Lorasid, Wygesic, Percocet

CURRENT MEDICATIONS:Neurontin 400 mg t.i.d., Skelatin 400 mg b.i.d., Prosom 2mg q. day, PAxil 10 mg q. day, Laxis 20 mg q. day, Seroquel 100 mg q. day and Tranxene 7.5 mg t.i.d.

SOCIAL HISTORY: She is s disabled chemist disabled since June 1997 or 1998. She is disabled through social security. She deines tobacco aor alcohol use.

REVIEW OF SYSTEMS: Please see the ptient questionnaire which I have reviewed today.

FAMILY HISTORY: Please see the ptient questionnaire which I have reviewed today.

PHYSICAL EXAMINATION: Please see the examination sheet for detils. Of particular note is the generalized tenderness over all musclesgroups including cervical

paraspinals, trapezius, thoracic paraspinals, lumbar paraspinals, arms, forearms, thighs and caves. There are palpable spasms within the trapezius and lumbar paraspinal regions. She has edema 2+ in the lower extremities to the mid calf level. The reminder of the examination is per the examination sheet.

IMMAGING AND SPECIAL SUDIES: See History of Present Illness.

IMPRESSION:

1. Bilateral Carpal Tunnel syndrome, worse on the right than on the left.
2. Bilateral thoracic outlet syndrome confirmed electrodiagnostically and through vascular studies.
3. Chronic cervical, thoracic and lumbar myofacial pain.
4. Fibromyalgia
5. Mild degenerative disc disease, cervical and lumbar spine.

RECOMMENDATIONS:

I recommended that the patient move forward with carpal tunnel release as recommended to her by her hand surgeon. She cleary has symptoms associated with carpal tunnel syndrome as well as physical findings and electrodiagnosis findings. She has not responded to bracing or injections.

She also has clear thoracic outlet syndrome symptoms with appropriate physical finding, electro diagnostic findings and vascular study findings. I recommend that she be referred to a thoracic surgeon who is capable of performing surgery for thoracic outlet syndrome. I haveinformed her that I do not perform this procedure.

I have discussed with her that she has a diffuse inflammatory process involving her muscles groups throughout her body consistent with fibromyalgia. I have discussed that there is no cure but only management of this through medication, stretching excersises and low impact regular excersise. Pool excersise may especially be of some benefits to her in managing her chronic myofacial pain.

Lastly, I see no indication for surgery on the cervical or lumbar spine at this time.

The patient is going back to Puerto Rico at this point.

/s/ Paul J. Zak
Paul J. Zak
PJZ
cc: Dr. Tomas Hernandez
Santa Cruz Street #73 Suite 308
Bayamon, Puero Rico 00959
Printed date: 03/22/03

App. 401

SOCIAL SECURITY ADMINISTRATION NOTICE
RETIREMENT, SURVIVOR AND DISABILITY INSURANCE

Date: ABR 25, 2003

Kenia M. Cintrón
P.O. Box 232
Naguabo, P.R. 00718

Claim Number: 584-66-4691

Recientemente hemos revisado la evidencia en su reclamación para recibir beneficios por incapacidad y encontramos que su incapacidad continúa. Cualquier situación especial relacionada con su reclamación será indicada por uno o más de los encasillados marcados abajo.

1. ( ) Le hemos señalado una revisión médica para Para esta fecha nos comunicaremos con usted si hay alguna duda sobre si su condición médica reúne los requisitos de severidad establecidos por la ley.

2. ( ) Usted ha trabajado por lo menos meses en el periodo probatorio de trabajo, pero no pudo continuar trabajando.

3. ( ) Hemos señalado una revisión de su reclamación en porque según parece su noveno mes del periodo probatorio de trabajo terminará para esa fecha de acuerdo con la información que nos ha sido suministrada.

4. ( ) Aunque usted ha completado su periodo probatorio de trabajo de 9 meses, encontramos que el trabajo que está haciendo no demuestra su habilidad

para hacer trabajo sustancial y lucrativo. (Vea al dorso la información sobre el periodo probatorio de trabajo).

5. ( ) Aunque usted está trabajando en el presente, (o trabajó recientemente y después dejó de trabajar), encontramos que el trabajo de usted ha estado haciendo no demuestra su habilidad de hacer trabajo sustancial y lucrativo. (La información sobre el periodo probatorio de trabajo al dorso de esta carta no es aplicable a su reclamación).

6. (**X**) Su reclamación será revisada de ves en cuando para verificar si usted es aun elegible a beneficios en incapacidad o ceguera. Cuando su reclamación sea revisada, se comunicarán con usted si hay alguna duda al respecto a si su elegibilidad continuará.

Si usted está recibiendo beneficios de Seguridad de Ingreso Suplemental, cualquier decisión sobre esa reclamación le será enviada a usted en un aviso por separado.

EXPLICACIÓN DEL PERIODO PROBATORIO DE TRABAJO

La ley de Seguro Social dispone un periodo probatorio de trabajo hasta 9 meses para que usted pruebe su habilidad para trabajar mientras sigue incapacitada sin perder los beneficios. Los 9 meses pueden ser consecutivos o separados por periodos en los cueles usted no trabaje nada. En general, todos los meses en los que usted gane más de $75 en salario o lleve a cabo actividad en negocio propio cuentan como un mes probatorio de trabajo.

Al final de los 9 meses, se hace una decisión de si su trabajo es sustancial y lucrativo. Si lo es y el trabajo continúa, los

beneficios terminan después de un periodo de ajuste de 3 meses. Si no lo es, los beneficios continúan.

Cuando sus cheques de beneficios terminan debido a su trabajo pero usted deja de trabajar otra vez o sus ganancias son significativamente menores dentro de los 15 meses después de los 9 meses del periodo probatorio de trabajo, usted debe notificar a cualquier oficina de Seguro Social. En la mayoría de los casos, los cheques pueden empezar otra vez sin radicar una solicitud de nuevo.

Su derecho a cheques por beneficios de incapacidad puede terminar en cualquier momento si su condición médica no le impide trabajar. Esto es verdad aunque usted no haya completado el periodo de prueba de trabajo. Sin embargo, los pagos se harán por el mes en que la incapacidad termina y dos meses adicionales.

REPORTE CON PRONTITUD LOS EVENTOS QUE PUEDEN AFECTAR SUS BENEFICIOS

Usted tiene que reportar inmediatamente cualquier cambio que pueda afectar sus beneficios. El no hacerlo puede implicar que tenga que devolver cualquier beneficio que no se le adeude. Déjenos saber si:

- Usted volvió a trabajar desde su último informe o volverá después (por pequeñas que sean las ganancias); o
- Usted previamente reportó que trabaja pero sus ganancias o funciones has cambiado; o
- Su doctor dice que su condición ha mejorado (aunque usted tenga un trabajo ahora); o
- Usted solicita compensación obrera, empieza a recibir esos cheques mensuales, (o suma global), o hay un cambio en la cantidad; o

- La cantidad que usted paga por gastos de trabajo relacionados con su incapacidad cambia o usted ya no paga por esos gastos.

Esta información será usada para decidir si usted sigue incapacitado bajo la ley o si la cantidad de beneficios que recibe tiene que ser cambiada.

Comuníquese con cualquier oficina de Seguro Social si usted tiene preguntas, quiere más información sobre su solicitud, o necesita reportar un cambio. La mayoría de las preguntas pueden ser tratadas por tratadas por teléfono.

REHABILITACIÓN VOCACIONAL

La agencia de Rehabilitación Vocacional de su Estado ayuda a las personas incapacitadas a prepararse para trabajar y encontrar trabajo. Puede ser que usted esté interesado en comunicarse con esa agencia para informase de los posibles servicios que haya disponibles para usted.

LMV

DO: A30

Beatrice Dissman
Regional Commisioner

Form SSA L – 1013 (8-82)

CERTIFIED TRANSLATION

SOCIAL SECURITY ADMINISTRATION NOTICE

RETIREMENT, SURVIVORS AND DISABILITY INSURANCE

Date: April 25, 2003

KENIA M. CINTRON
PO BOX 232
NAGUABO, PR 00718

CLAIM NUMBER: 584-66-4691

We have recently reviewed the evidence in your claim to receive disability benefits and we find that your disability continues. Any special situation related to your claim will be indicated by one or more of the boxes marked below.

1. ( ) We have scheduled a medical review for_____.

By this date, we will communicate with you if there are any doubts about whether or not your medical condition meets the severe requirements established by law.

2. ( ) You have worked for at least _____months in the probationary work period, but were unable to continue working.

3. ( ) We have scheduled a review of your claim for_____

because it appears that your ninth month of the probationary work period will end on that date, according to the information submitted to us.

4. ( ) Even though you have completed your 9-month probationary work period, we have found that the work you are performing does not demonstrate your ability to do

substantial and lucrative work. (See on the back the information regarding the probationary work period).

5. ( ) Even though you are currently working, (or were working recently and then stopped working), we have found that the work you have been performing does not demonstrate your ability to do substantial and lucrative work. (The information regarding the probationary work period on the back of this letter is not applicable to this claim).

6. (**X**) Your claim will be reviewed from time to time to verify whether you are still eligible for benefits based on disability or blindness. When your claim is reviewed, you will be contacted if there are any doubts about whether or not your eligibility will continue.

If you are receiving Supplementary Income Security benefits, any decision regarding this claim will be sent to you in a separate notice.

EXPLANATION REGARDING
THE PROBATIONARY WORK PERIOD

The Social Security Act provides a probationary work period of up to 9 months for you to prove your ability to work while you are still disabled, without losing the benefits. The 9 months may be consecutive or separated by periods where you do not work at all. In general, all the months in which you earn salaries of over $75, or in which you carry out activities in your own business, count as a probationary work period month.

At the end of the 9 months, a decision is made about whether your work is substantial and lucrative. If it is, and the work continues, the benefits shall end after an

adjustment period of 3 months. If it is not, the benefits shall continue.

When your benefit checks end due to your work but you stop working again, or your earnings are significantly lower within the 15 months following the 9-month probationary work period, you must notify any Social Security office. In the majority of the cases, the checks may begin again without filing a new application.

Your right to receive disability benefits checks may end at any time if your medical condition does not prevent you from working. This is so even if you have not completed the probationary work period. However, the payments shall be made for the month in which the disability ends and two additional months.

REPORT PROMPTLY THE EVENTS THAT COULD AFFECT YOUR BENEFITS

You must report immediately any change which could affect your benefits. Failure to do so, could imply that you may have to return any benefit not debited to you. Let us know if:

– You returned to work since your last report or will return afterwards

(regardless of how little the earnings may be); or

– You previously reported that you were working but your earnings or your functions have changed; or

– Your doctor says that your condition has improved (even though you do not have a job right now); or

– You request labor compensation, you begin to receive those checks monthly, (or a lump sum), or if there is a change in the amount; or

– The amount you pay for work expenses related to your disability changes, or you no longer pay for those expenses.

This information will be used to decide if you continue disabled under the Law of if the amount of the benefits you receive must be changed.

Communicate with any of our Social Security offices if you have any questions, if you want more information about your application, or if you need to report a change. Most of the questions can be dealt with by phone.

VOCATIONAL REHABILITATION

The Vocational Rehabilitation agency in your State helps disabled people to prepare for work and to find a job. You may be interested in contacting this agency to learn about the possible services that may be available to you.

LMV DO: A30

Beatrice Dissman
Regional Commissioner
Form SSA L-1013 (8/82)

United States District Court
For the District of Puerto Rico
-CERTIFIED-
To be a correct translation prepared by:
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Tomás Hernández, M.P.H.; M.D.
Neurología
Electroencefalografía
Calle Santa Cruz Núm. 73, Suite 308
Bayamón, P.R. 00961 – Tel. (787) 786-4125

May 29, 2003

To : Whom It May Concern
/s/ Tomas Hernandez

From : Tomás Hernández, M.D., M.P.H.

Re : Update Report for Kenia M. Cintrón Parrilla
SS # 584-66-4691

The above captioned 46 years old dextral homemaker and former pharmaceutical worker is under my professional care since September 11, 1995. She continues her follow-up visits at regular intervals. In the past year the patient was seen at the office on: February 21, 2002, July 22, 2002, August 7, 2002, November 4, 2002, December 6, 2002 and April 1, 2003.

This past year is characteristics by a steady worsening of her symptoms and inexorable weight gain, adding six more pounds to an already obese person. On October 11, 2002 a follow-up EMG-NCV was done that clearly showed objective evidence of deterioration of her conditions. On April 2003, she underwent an evaluation by Dr. Paul J. Zak of the Coastal Spine Specialist at Largo Florida, and Dr. Elizardo Matos, a chest surgeon in Puerto Rico on April 9, 2003. Copies of these reports are included as part of this update. On April 2, 2003 I submitted a disability report to the Social Security Administration in behalf of this patient.

Her diagnosis still included but are not limited to the following:

1. Bilateral Carpal Tunnel Syndrome, severe, pending releases by hand surgeon.
2. Bilateral Thoracic Outlet Syndrome, also worsening, but surgery not indicated yet.
3. Cervical Radiculopathy, worsened.
4. Lumbar Radiculopathy, also worsened.
5. Fibromyalgia, newly diagnosed.
6. Hepatic involvement, possibly secondary to the multiple medications taken.
7. Chronic Anxiety with Depression, situational.

All of these conditions were a direct or indirect result of the patient's job as a supervisor at a large pharmaceuticals company. Unfortunately, the functional prognosis for this patient is poor; and all the clinical entities mentioned are considered to be permanent and progressive in nature.

/s/ TH
TH / rsh

App. 411

ELIZARDO MATOS CRUZ, MD.
CIRUGIA CARVIVASCULAR Y TORACICA
(Cardiovascular and Thoracic Surgery)
DIPLOMATE AMEERICAN BOARD OF
THORACIC SURGERY

Patient: Kenia M. Cintrón Parrilla Date: 9/abril/03
Age: 47 yrs. (April 9, 03)
Reason for visit:

47 y/o female with very long history of cervical pain, back pain, numbness and with severe symptoms since 1997. Patient at present is disabled not working and very evaluated for Fibromyalgia degenerative disease. Different diagnostic procedures prove resulted in diagnosis of bilateral carpal tunnel, C5-6 degenerative disc disease. Patient also had arterial Duplex showing decrease flow to writs at hyperabduction as well as Thoracic outlet on Nerve Conduction studies as well as Carpal Tunnel. Patient has been evaluate and recommended to have Carpal Tunnel Release.

PE: Very anxious patient regarding her condition and some step to be taken to improve it. Patient had Kenalog injected relating ex----- pain on wrist. At present still with swelling and tenderness of trapezius and shoulder girdle. No suggestion of vascular damage but only slight punching of artery.

In view of multiple manifestation of this inflammation syndrome it is doubtful patient would (G) improve improve from first Rib. Resections.

Only recommendation at this time would be chronic pain clinic for symptomatic blocks.

P (1) Pain clinic referral

(2)Shoulder girdle strength exercises.

/s/ Eduardo Matos Cruz

JAN PIERRE ZEGARRA, M.D., F.A.C.S.
Cirugía de Mano y Microcirugía de extremidades
(Hand Surgery and Extremities Microsurgery)
Plaza San Francisco
Ave. De Diego 201
Suite 201
Suite 31, San Juan, PR 00927-5832
Tels. 758-5034/763-5670

A(To): Dr. Tomás Hernández FECHA(Date): 2/20/03
Nombre Del Paciente (Patient's Name): Kenia M. Cintrón

HALLAZGOS, DIAGNOSTICO Y/O RECOMENDACIONES:
(Findings, Diagnostic and/or Recommendations:)

Ass: Bilateral Carpal Tunnel Syndrome
Fiber Tenosynovitis | moderate to severe
Cervical Radiculopathy mild
T.O.S

Recom: (1) Bilateral
(2) Wrist braces at night
(3) (1)Skelaxin 40 mg 2rtab bid
(2) Neurontin 400mg tid
(3) Bextra 20 mg day
(4) Follow up on Jan/02.

AGRADEZCO LA CORTESIA DE ESTE REFERIDO
(I appreciate the courtesy of this referral.)

ATENTAMENTE,
(Attentively,)

/s/ Jan Pierre Zegarra
Jan Pierre Zegarra M.D.
Lic. 4763

Exhibit No.13

www.lilly.com **Lilly**

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, Indianan 46285
U.S.A.

Phone 317 276 2000

July 3, 2003

Ms. Kenia Cintrón
P.O. Box 388
Naguabo, Puerto Rico 00718-0388

Dear Ms. Cintron:

At its June 23, 2003, meeting, the Eli Lilly and Company Employee Benefits Committee (the "Committee") review your written request, dated May 29, 2003, for benefits under The Lilly Extended Disability Plan (the "Plan"). The Committee reviewed the information you provided as part of your appeal, but was unable to verify your claimed disability. Accordingly, the Committee requests that you receive an independent medical evaluation ("IME") by both a neurologist and a psychiatrist so that the Committee can further evaluate your claim. As you may know, Section 6.02(b) of the Plan allows the Committee to require you to undergo additional evaluation. That section of the Plan states:

> The employee Benefits Committee may require an Employee to undergo examination by a Licensed Physician or vocational expert chosen by the Employee Benefits Committee to determine the

extend of any illness or injury for which the Employee makes a claim under the Plan. The Employee Benefits Committee may require an Employee to undergo such examinations as often as is necessary to determine whether the Employee remains Disabled. The Trustee shall pay out of the Trust the expense of any examination required by the Employee Benefits Committee pursuant to this paragraph (b).

You may choose any of the three physicians listed below for each discipline or have the physician selected for you.

Discipline	**Name**	**Telephone**
Neurologist	Carlos Luciano, Clínica Las Americas	(787) 767-2248
Neurologist	William Filipi, Auxilio Mutuo	
Neurologist	Lidgia Vives, Hosptital Metropolitano	
Psychiatrist	José Franceschini, Calle Santa Cruz, Bayamón	
Psychiatrist	José Rodríguez Santiago Calle Arzuaga, Río Piedras	
Psychiatrist	Jorge Suria Colón, Calle Aguas Buenas, Bayamón	

Please notify me as soon as possible regarding your decision. Following your decision, we will contact the physicians and arrange for the IMEs at Lilly's expense. If you refuse to receive an IME, the Committee will be required to review your appeal without such information and may deny your request based on your failure to comply with the terms of the Plan or because it lacks necessary information to confirm your claimed disability.

As previously provided to you, I also am attaching Section 2.01(a)(5) of the Plan, which defines "Disability", and Section 6.02(a) of the Plan, which describes Plan requirements that detail information you must submit as proof of your entitlement to disability benefits for your reference. Because the Committee in making its determination regarding your appeal.

Please also consider this correspondence as notice by the Committee of its need for a forty-five (45) day extension (i.e. for a total of ninety (90) days from receipt of your appeal to render its decision. This extension is permitted by section 6.05(b) of the Plan and should allow sufficient time for you to exercise one of the options described above to received IMEs and allow the physicians time to provide their evaluation for the Committee's review. Because the Committee does not control the time table for you to submit to IMEs and for the doctors to complete their reports, this extension is due to matters beyond the control of the Committee. The Committee will make its decision following its receipts of your IME reports or no later than the end of the forty-five (45) day extension period, which ever is earlier.

Please let me know your decision as soon as possible. Thank you for your anticipated cooperation.

Sincerely,

EMPLOYEE BENEFITS COMMITTEE

/s/ John J. Purcell

John J. Purcell

cc: Jesus Hernandez Sanchez

ATTACHMENT – SECTIONS 2.019(a)(5) and 6.02(a) OF THE PLAN

Section 2.01(a)(5) provides:

Disability. The term "Disability" means the inability of an employee to engage for remuneration of profit, in any occupation commensurate with the Employee's education, training and experience, provided that the inability results from an illness or accidental bodily injury that requires the Employee to be under regular care of a Licensed Physician. The term "Disability" shall no include an inability that is attributable to war, declared or undeclared, or any act of war; to intentionally self-inflicted injuries; or to active participation in a riot. An employee who has been determined by the Employee Benefits Committee to have a Disability shall sometimes be described herein as being "Disabled."

Section 6.02(a) provides:

Proof of Claims.

(a) An Employee who claims to be entitled to a Company-Provided Disability Benefits Committee, at the Employee's own expense, the following information.
   (1) the date on which the Employee's disability commenced;
   (2) the cause of the Disability;
   (3) any available Objective Medial Evidence of the Disability;
   (4) the nature and extend of the Disability;
   (5) the name and address of the Licensed Physician who is providing the Employee with regular care; and

(6) such other information as the Employee Benefits Committee shall reasonably require in order to determine whether the Employee is eligible for the Company-Provided Disability Benefits or EDL PLUS Disability Benefit.

Failure to provide the information specified in this paragraph (a) shall result in the denial of an Employee's claim for Company-Provided Disability Benefit or EDL PLUS Disability Benefit payments, as applicable.

Exhibit No.14

Certified Mail Number: 7001 1940 0005 5292 2045
Fax: (317) 433-8295

July 16, 2003
Eli Lilly and Company
Employee Benefits Committee
Attn: John J. Purcell
Mail Drop Code 1773
Lilly Corporate Center
Indianapolis, IN 46285-1773
Tel. (317) 276-3081
Fax. (317) 433- 8295

Mr. Purcell:

On the letter dated July 3, 2003, the Eli Lilly and Company Employee Benefits Committee (the "Committee") indicates that the Committee reviewed Kenia M. Cintrón request for benefits under The Lilly Extended Disability Plan (the "Plan"). Also, indicates that the Committee reviewed the information provided by Kenia as part of the appeal, but was unable to verify her claimed disability. On the same letter, the Committee requests Kenia to receive an independent medical evaluation ("IME") by both a neurologist and a psychiatrist so that the Committee can further evaluate her claim. Also, reminds Kenia that the section 6.02(b) of the Plan allows the Committee to require her to undergo additional evaluation. The Committee indicates that this section states:

> "The Employee Benefits Committee may require an Employee to undergo examinations by a Licensed

> Physician or vocational expert chosen by he Employee Benefits Committee to determine the extent of any illness or injury for which the Employee makes a claim under the Plan. The Employee Benefits Committee may require an Employee to undergo such examinations as often as reasonably necessary to determine whether the Employee remains Disabled. The Trustee shall pay out of the Trust the expense of any examination required by Employee Benefits Committee pursuant to this paragraph (b).

On the same, the Committee instructs Kenia to choose a physician for each discipline from a list of physicians selected by Lilly and to notify Mr. John J. Purcell of the decision, in order to allow Committee to contact the physicians and arrange for the IMEs at Lilly expense. The Committee also informs that if Kenia refuse to receive an IME, the Committee will be required to review the appeal without such information and may deny Kenia's request based on the failure to comply with the terms of the Plan or because it lacks necessary information to confirm the claimed disability.

In addition, the Committee includes in the letter an ***"ATTACHMENT – SECTIONS 2.01(a)(5) and 6.02(a) OF THE PLAN"*** and informs the need of a forty-five (45) day extension to render its decision.

After reviewing the above information, a comparison between the Committee requests and the requirements in Section 6.02(b) detects discrepancies as follows:

1- The Plan does not state nor require an Employee to receive an independent medical evaluation ("IME") as a

requirement for an initial or appeal disability claim process.Furthermore, the Plan does not even mention, stated nor define an independent medical evaluation.

2- The Plan does not state that the Committee will provide to the Employee a list of selected physicians in which the Employee will choose from them.

3- The Plan does not state nor require an Employee to agree with the Committee to choose a physician for each discipline from a list of physician selected by the Committee.

4- The Plan does not state nor require an IME as a requirement for a claim or an appeal process or approval.

5- The Agreement signed by the parties does not state nor mention anything about IME, list physicians selected by the Committee for IME, agreement between the parties to select physicians for IME, neither.

Apparently, the Committee has the intention to change or modify the rules, conditions, instructions, and etcetera, as stated in the Plan for Kenia's claims. These actions seem to be rare and suspicious. If after all the information and documentation sent to the Committee in the initial and appeal claims, the Committee still allege that was unable to verify Kenia's claimed disability and, require Kenia to undergo to a medical evaluation, then the Committee must follow the above instructions stated on Section 6.02(b) of the Plan. Moreover, the Committee must not change the conditions, instructions, circumstances, rules, and etcetera, stated in this Section 6.02(b).

Kenia will only undergo to medical evaluations as per required and stated under Section 6.02(b) of the Plan. In

addition, Kenia require that the physicians must supply her a certified copy of all medical evaluations performed to her at the same time they are supplying them to the Committee. It is important to establish that, the Plan does not define these medical evaluations as independent medical evaluations (IME), and any medical evaluation performed to Kenia under the Plan must not be considered as IME.

It is worth to indicate that in the past, Kenia has undergone to a medical evaluations of physicians selected and paid by Lilly and those physicians (Dr. Felix Matos, Dr. Marcos U. Ramos) have lied regarding Kenia's medical conditions. Based on those experiences, Kenia will not necessarily accept as a valid or good the medical evaluations performed to her by any physician selected by the Committee, Lilly or any other person. Kenia will reserve her rights to refute any medical evaluation that may affect her adversely.

Even though the information required under section 6.02(a) is stated in, all the documentation sent to the Committee in the initial and appeal claims, below there is the information as per required in the Attachment on Section 6.02(a):

6.02. Proof of Claim

An Employee who claims to be entitle to a Company-Provided Disability Benefits and/or EDL PLUS Disability Benefit shall submit to the Employee Benefits Committee, at the Employee's own expense, the following information:

1- date on which the Employee's Disability commence: **June 18, 1997**

2- the cause of Disability:

Refer to medical reports and documentation sent with the disability claim.

3- any available Objective Medical Evidence of the Disability:

Refer to medical reports and documentation sent with the disability claim.

4- nature and extent of the disability:

Refer to medical reports and documentation sent with the disability claim.

5- the name and address of the License Physician who is providing the Employee with regular care:

Dr. Tomás Hernández - neurologist

No. 73 Santa Cruz St. Suite 308 Bayamón, PR00961-6919

Dr. Héctor L. Torres - psychiatrist

No. 53 Muñoz Marín Ave. Humacao, PR 0091

Other physicians and their respective addresses are reported on the initial and appeal claim documentation.

6- such other information as the employee Benefits Committee shall reasonably require in order to determine whether the Employee is eligible for a Company-Provided Disability Benefit or EDL Plus Disability Benefit:

Refer to medical reports and documentation sent with the disability claim.

Attached, there are the two (2) lists of documentation sent to the Committee in the initial and appeal claims in which all the required information is stated.

1- ***Notice of Claim for the Lilly Extended Disability Plan – Aug. 16,* 2002**

2- ***Notice of Claim for an Appeal of Adverse Benefit Determination – May 29, 2003***

In order to comply and fulfill the Committee requirements, Kenia request from the Committee a questionnaire in which Kenia and/or the physicians that have been providing her with regular care can fill out all required information. Also, based on the fact that the Committee did not mention in the letter if they reviewed or not the documentation regarding the initial claim, the Committee must informed Kenia if she has to send all the documentation sent on the initial claim to the Committee, again. If the Committee needs any information regarding Kenia's disability claim or there is any doubt do not hesitate to contact us at:

PO Box 388
Naguabo, PR 00718-0388

Sincerely,

/s/ Miguel A. García Méndez
Miguel A. García Méndez

/s/ Kenia M. Cintrón
Kenia M. Cintrón

Number of pages including this cover sheet: 8

Exhibit No.15

Certified Mail Number: 7002 0860 0008 6598 1521
7002 0860 0008 6598 1545

Fax.: (317) 433-8295
(787) 725-1112

August 22, 2003

To: Charlie Grandy
Eli Lilly and Company
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, IN 46285-1773
Tel. (317) 433-2607

Cc: John J. Purcell
Eli Lilly and Company
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, IN 46285-1773
Tel. (317) 433-3081
Fax. (317) 433-8295
Law. Jesús Hernández Sánchez
Fax. (787) 725-1112

Today, at approximately 3:30 pm, Kenia received a call from a person who was identified[1] as Mr. Charlie Grandy from Lilly regarding the employee benefit appeal submitted by her. He required Kenia to agree with the Committee for another extension period of 30 days in order to submit

[1] It should say "who identified himself".

Kenia to medical evaluations with two physicians. This extra extension period is neither part nor stated in the Employee Benefits Plan, nor stated in the Settlement Agreement signed by the parties. Kenia responded that she would consult with the lawyers before make a decision.

After a telephone conversation with the lawyer and based on the fact that, we responded to the Committee on time informing that Kenia will under go medical evaluations as stated under section 6.02(b) of the Plan and, the Committee never responded nor requested from us any other information nor clarifications, we have decided that we Kenia will still be able to undergo to medical evaluation only as stated under section 6.02(b) of the Plan and signed by the parties in the Settlement Agreement. (Refer to letter dated July 16, 2003, page 2, paragraph 4).

Respectfully,

/s/ Miguel A. García Méndez
Miguel A. García Méndez

/s/ Kenia M. Cintrón
Kenia M. Cintrón Parrilla

Number of pages including this cover sheet: 5

Exhibit No.16

www.lilly.com **Lilly**

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, Indianan 46285
U.S.A.

Phone 317 276 2000

August 25, 2003

BY FAX (787-874-0025) AND REGULAR MAIL
Ms. Kenia Cintrón
P.O. Box 388
Naguabo, Puerto Rico 00718-0388

Dear Ms. Cintron:

This is to confirm our telephone conversation on Friday, August 22, 2003, in which we discussed the possibility that Eli Lilly and Company Employee Benefits Committee ("Committee") would extend the ninety (90) day review period provided in Section 6.05(b) of the Plan fro the Committee to decide your appeal, for an additional thirty (30) days, Up to and including September 26, 2003. Consequently, this proposal would also amend paragraph nine (9) of the Agreement executed by the parties on August 14, 2002 ("Agreement").

As describe in the Committee's July 3, 2003, correspondence to you, the Committee requested (as did the Benefit Plan Review Committee before it) that you see a neurologist and a psychiatrist so that the Committee could further evaluate your claim for disability benefits. In response, you claimed that the Committee was modifying

the Plan's requirements and questioned the Committee's authority to request an independent medical evaluation. Moreover, you indicated in your July 16 correspondence that you would not comply with the Committee's request without imposing additional conditions (e.g. requiring a medical questionnaire for your physicians). Last Friday, you confirmed that you had not seen any of the physicians outlined in the Committee's July 3 correspondence. You did, however indicate, your willingness now to see such physicians as long as you did not have to choose them. While you previously indicated willingness to the Benefit Plan Review Committee to see physicians if it choose them and later failed to attend scheduled appointments with the selected physicians, the Committee is willing to agree to your request. Because of the Committee's requirement to respond to your appeal within the timeframe stated in the Agreement, however, it is not possible for you now to attend physician appointments without extending the stated deadline in the Agreement.

While the committee believes that it is in the mutual interest of the parties for you to attend an independent medical evaluation by both a neurologist and a psychiatrist, so that the Committee can further evaluate your claim, it is entirely your decision. Therefore, should you wish to attend the physician evaluations, you must return this letter to us by fax at (317) 433-8295 with your signature on or before noon (12:00p.m.) tomorrow, August 26, 2003, Should we received your written consent within the period provided, you would received a written communication from the Committee indicating the two physicians you must see and the dates for each evaluation., which would be at Lilly's expense.

If you continue to refuse to undergo the requested examinations, the Committee will be required to review your appeal without such information and may deny your requested based on you failure to comply with the terms of the plan or because it lacks necessary information to confirm your claimed disability.

Please let me know if you have any questions.

Sincerely,

Employee Benefits Committee

/s/ Charles A. Grandy
Charles A. Grandy

cc: Jesús Hernández Sánchez

I, Kenia Cintrón fully understand the meaning and extent of all the terms and obligations included in this letter, and I voluntarily and freely accept the same.

In Naguabo, Puerto Rico, this __ day of August 2003.

_____
Kenia Cintrón

Exhibit 17

Certified Letter: 7002 0860 0008 6598 1637
Fax Numbers: (317) 433-6610
(317) 433-8295

August 25, 2003

To: Charles A. Grandy
Eli Lilly and Company
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, IN 46285-1773
Tel. (317) 433-2607
Fax. (317) 433-6610

Cc: John J. Purcell
Eli Lilly and Company
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, IN 46285-1773
Tel. (317) 433-3081
Fax. (317) 433-8295

Today, we received a letter dated August 25, 2003 (by fax) from the Employee Benefits Committee (the Committee) and signed by Mr. Charles A. Grandy. The Committee intent to certified this letter as an Amendment to the Agreement signed by the parties. In the second paragraph of such letter (or amendment), the Committee states allegations, which are not correct.

1- Kenia has never refused to undergo to a medical evaluation as stated on section 6.02 of the Employee Disability Benefit Plan (the Plan).

2- On July 16, 2003 letter, Kenia did not questioned the Committee authority. Kenia just reported the discrepancies between the Agreement, signed by the parties, and the Committee requests. Also, stated that she will undergo to medical evaluation as stated on section 6.02(b) of the Plan.

3- Kenia has never imposed to the Committee additional conditions in order to comply with the Committee's request to undergo to medical evaluations. Kenia just request a questionnaire in order to complete any information that could be missing, from the physicians that have been attending her, and she might not known that was missing. This request was because the Committee never told her what specific information was missing or was needed to be informed, in order to fulfill the Committee requirements. It is Kenia's right to request any information, documentation or paperwork that can help her to properly submit any information requested by the Committee.

4- On Friday (August 22, 2003) Kenia received a phone call by a person who identified himself as Mr. Charlie Grandy (while Mr. John Purcell is identified and stated as the contact person in the Agreement). In Friday's conversation, Kenia informed to Mr. Charlie Grandy that she had not seen the physicians listed by the Committee because the Committee never informed her of any appointment to undergo to any physician. Kenia answered that nobody has contacted her after the letter

she sent on July 16, 2003. In the same conversation, Kenia confirmed to Mr. Charlie Grandy that she has always agreed to undergo to medical evaluations only as stated on section 6.02(b) of the plan, which Mr. Charlie Grandy now agreed if she approves the 30 days extension period, extension which is out of Plan and out of the Agreement signed by the parties.

5- After the Friday's conversation, Kenia sent a letter by fax and certified mail informing that, she still able to undergo to the physicians evaluation as stated on section 6.02 of the plan and as signed by the parties under the Agreement.

Now, Kenia received this letter sent by the Committee threatening her to accept and amendment with information that is not correct. Moreover, the Committee tries to blame and frame Kenia if she does not agree to accept the amendment.

It is imperative that the Committee recognizes that:

1- Kenia submitted the appeal on time on May 29, 2003 by fax and Express Mail.

2- The Committee (Mr. John Purcell) certified that has received the appeal fax and letter, on the letter dated June 5, 2003, stamped on June 6, 2003 and received on June 12, 2003.

3- The Committee (Mr. John Purcell) sent a letter dated July 3, 2003, stamped on July 7, 2003 and received on July 14, 2003 (42 – 46 days later), in which, the Committee tried to change the terms and conditions of Agreement, signed by the parties. In this letter, the Committee never notified Kenia of any appointment

with the physicians nor complied with section 6.02(b) of the Plan.

4- Kenia responded on July 16, 2003 (2 days after the arrival), that she would undergo to medical evaluations only as stated in section 6.02 (b) of the Plan and signed by the parties in the Agreement.

5- Mr. Charles A. Grandy called Kenia on August 22, 2003 (85 days later) requiring an amendment of an additional extension period of 30 days, extension that is out of the Plan and out of Agreement signed by the parties.

6- The Committee failed again to comply with the Agreement by never contacted nor informed Kenia of any appointment with the physicians within the period agreed and signed by the parties. Neither expressed any concern nor requested any clarification regarding Kenia's letter dated July 16, 2003 until today (August 25, 2003).

It is important to state that the Committee cannot threaten, blame or frame Kenia for its fault. Kenia has been properly complying with the Agreement as signed by the parties. It is the Committee responsibility to comply with the Agreement as well. The Committee is who has been several times failing to comply with the Plan and the Agreement signed by the parties. It is also very important to state that Kenia has never refused to undergo to medical evaluations as stated in section 6.02(b) of the Plan and signed by the parties in the Agreement. Kenia still willing to undergo to medical evaluations as stated on sections 6.02(b) and 6.05(b) of the Plan and signed by the parties in the Agreement.

Based on the fact that:

1- The stated information in the letter (or amendment) dated August 25, 2003, is not correct;

2- There have been many misunderstanding between the parties;

3- The Committee has failed consistently and intentionally to comply with the Agreement, signed by the parties, trying to adversely affect Kenia's benefits;

4- The Committee has never shown to have any good faith in attend Kenia's claim fairly;

5- It is a shame how the Committee is requesting from Kenia to make a decision to accept and approve an Amendment with information that is not the correct one in less than 24 hours when, the Committee has not been capable to comply with the timeframe stated in the Agreement signed by the parties and also stated in their own Plan; and now is demanding and additional 30 days extension period.

6- We will not consent to allow anyone to threaten, blame or frame Kenia;

We have agreed that we will not approve the Amendment as written. Therefore, Kenia will continue to comply with the Agreement as stated and signed by the parties without any Amendment.

Respectfully,

/s/ Miguel A. García Méndez
Miguel A. García Méndez

/s/ Kenia M. Cintrón
Kenia M. Cintrón Parrilla

Number of pages including this cover sheet: 3

Exhibit No.18

www.lilly.com **Lilly**

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, Indianan 46285
U.S.A.

Phone 317 276 2000

August 27, 2003

BY FAX (787-874-0025) AND REGULAR MAIL
Ms. Kenia Cintrón
P.O. Box 388
Naguabo, Puerto Rico 00718-0388

Dear Ms. Cintron:

At its August 25, 2003 meeting the Eli Lilly and Company Employee Committee (the "EBC") reviewed your appeal dated May 29, 2003 of the denial by the Benefits Plan Review Committee (the "Committee") of your request for monthly benefit under The Lilly Extended Disability Plan (the "Plan"). Based on the information provided to the EBC, the EBC (1) was unable to verify your claimed disability; and (2) determine that you failed to provide necessary information to support your entitlement to disability benefits as required by the Plan.

As you may be aware, the Plan is a self-funded employee welfare benefit plan. The Plan is a component plan of "The Lilly Employee Welfare Plan and is governed by federal regulation under The Employee Retirement Income Security Act of 1994 ("ERISA"). The Employee Benefits Committee is appointed by the Eli Lilly and

Company Board of Directors to review claims under and administer this Plan.

The EBC reviewed the information provided in your appeal. The EBC upheld the Committee's pervious determination that you are ineligible for Plan benefits. Section 6.02(a) of the plan requires that you submit proof of your entitlement to disability benefits including: 1) the date on which the Employee's disability commenced; 2) the cause of the Disability; 3) any available Objective Medial Evidence of the Disability; 4) the nature and extend of the Disability; 5) the name and address of the Licensed Physician who is providing the Employee with regular care; for your claimed disability. Subsection 2.01(a)(5) of the Plan in relevant part defines "Disability" as "the inability of an employee to engage for remuneration of profit, in any occupation commensurate with the Employee's education, training and experience, provided that the inability results from an illness or accidental bodily injury that requires the Employee to be under regular care of a Licensed Physician". In evaluating the claim for disability benefits, section 6.02(b) of the Plan authorizes the EBC to "require an Employee to undergo examinations by a Licensed Physician or vocational expert chosen by the Employee Benefits Committee to determine the extent of any illness or injury for which the Employee makes a claim under the Plan. The Employee Benefits Committee may require an Employee to undergo such examinations as often as reasonably necessary to determine whether the Employee remains Disabled."

Because the EBC was unable to verify your claimed disability, your request for benefits was denied. Based on

the information provided, the EBC agree with the Committee's findings that there appear to be several areas of poor correlation between your reported symptoms, including the severity of your symptoms, and the diagnostic studies you provided. Specifically, you have complained of severe upper arm pain, neck pain, and back pain for several years. The severity of your symptoms, however are poorly correlated with diagnostic studies performed, X-Rays, CT Scans, bone scans and Doppler flow studies suggest mild degenerative disc disease without significant flow obstruction or nerve root compression. Such findings are not inconsistent with mild symptoms and/or the aging process. In addition, an emotional disease component is suggested by some evaluators but the extent of the disease is unclear as well as what effective interviews have been offered and your compliance with such recommendations.

In addition, the EBC also denied your request for EDL benefits because you failed to provide information necessary to verify your claimed disability as requested. By letter dated September 23, 2002, you were requested to undergo an independent medical evaluation by both a. neurologist and a psychiatrist to assist the Committee in completing its ongoing evaluation. After initially agreeing to undergo such evaluations by letter dated October 21, 2002, you did not appear at scheduled appointments and notified Lilly that you would not undergo such independent medical evaluations by letter dated November 8, 2002. Subsequently, the EBC requested that you undergo an independent medical evaluation by both a neurologist and a psychiatrist by letter dated July 3, 2003. Last Friday you confirmed that you have not seen any of the physicians identified. Instead by a letter dated July 16, 2003, you

claimed that the Committee was modifying the Plan's requirements and questioned the EBC's authority to request an independent medical evaluation and indicated that you would not comply with the Committee's request without imposing additional conditions. Following your conversation last Friday in which you now indicated a willingness to the EBC's review to allow sufficient time for you to see physicians. By letter dated August 26, however, you rejected that opportunity. Accordingly , the EBC also must deny your request for benefits for failure to comply with the term of the Plan.

Sincerely,

Employee Benefits Committee

/s/ John J. Purcell
John J. Purcell

cc: Jesus Hernandez Sanchez

Exhibit No.19

www.lilly.com **Lilly**

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, Indianan 46285
U.S.A.

Phone 317 276 2000

August 15, 2003

Ms. Kenia Cintrón
P.O. Box 388
Naguabo, Puerto Rico 00718-0388

Dear Ms. Cintron:

This letter is to notify you of a change to the Lilly Retirement Plan (the Plan) and its administration that will affect the pre-retirement survivor benefit your surviving spouse may receive upon your death.

Pre-Retirement Survivor Benefit

When you left Eli Lilly and Company (the Company), you and your spouse were given the opportunity to choose a pre-retirement survivor benefit. If you elected this benefit, your surviving spouse would be eligible to receive a benefit from the Plan if your death occurred before you began receiving your deferred service benefit payments, provided your spouse was married to you throughout the one-year period before your death. Prior to the Plan change, the cost of this pre-retirement survivor benefit was paid for through reductions in your deferred-service benefit.

Amendment to the Plan

The Company amended the Plan to remove a participant's obligation to pay the cost of a pre-retirement survivor

benefit. This, in turn, eliminated the need to select a pre-retirement survivor benefit in exchange for unreduced deferred service benefit payments. As a result, if your death occurs before you are eligible to receive your .deferred service benefit, your surviving spouse will be eligible to receive a benefit whether or not you elected the pre-retirement survivor benefit when you left the Company. There is no cost to you or your spouse for this coverage.

Post-Retirement Survivor Benefit

Please note that the Plan change does not eliminate the requirement that you pay the cost of your spouse's post-retirement survivor benefit through reductions in your monthly benefits if you chose the joint and survivor annuity when you began receiving your benefit

Initiating Survivor Benefit Payments

You will be eligible to receive a deferred-service benefit at the time you would have reached 80 points with Lilly or you reach 65 years of age, whichever comes first. If you elected the pre-retirement survivor benefit, your deferred service benefit will not be reduced to pay for this option. In the event that your death occurs prior to receiving your benefits, your surviving spouse should contact us to initiate benefit payments at the time you would have been eligible for your benefits. In order to ensure payments are delivered in a timely manner, please keep us informed of your' current address.

If you have any questions or would like to discuss this in more detail, please contact Meme Sego at (317) 276-2103.

Sincerely,

John J. Purcell,
Manager, Employee Benefits

Exhibit No. 20

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA,
Plaintiff,
v. Civil No.: 99-1229 (JAF)
ELI LILLY INDUSTRIES, INC.;
ELI LILLY DEL CARIBE, INC.,
and ELI LILLY INDUSTRIES,
INC. HEALTH, WELFARE AND
DISABILITY PLAN,
Defendants.

ORDER

The pending request by Plaintiff to set aside the settlement and/or for settlement-related specific relief is **DENIED.**

As agreed by the parties, Plaintiff submitted her claim for extended benefits to Eli Lilly's Benefit Plan Review Committee within sixty days after the execution of the settlement agreement. The Committee requested that Plaintiff undergo an independent medical evaluation by a neurologist and psychiatrist to assist the Committee in the evaluation process.

After agreeing to undergo the evaluations, Plaintiff failed to appear at scheduled appointments and notified Eli Lilly in writing that she would not undergo the medical examinations as originally planned.

The Committee met on November 13, 2002, to review the claim for benefits, concluding that Plaintiff failed to provide the necessary information to support her entitlement to disability benefits. Plaintiff was advised of her right to appeal within 180 days from the receipt of the Committee's letter.

The settlement agreement requires full exhaustion of Eli Lilly's Disability Plan procedures. Until this is accomplished, the court will not consider relieving any party from the terms of the settlement.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 30th day of June, 2001.[1]

/s/ Jose Antonio Fuste
JOSE ANTONIO FUSTE
U. S. District Judge

[1] There is an error on the year it should be 2003.

APPENDIX AC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA, et al.,
Plaintiffs,
v. Civil No. 99-1229 (JAF)
ELI LILLY INDUSTRIES, INC.;
HEALTH WELFARE AND
DISABILITY PLAN; LILLY
DEL CARIBE, INC.; COMPANY X;
COMPANY Y,
Defendants.

OPPOSITION TO REQUEST FOR REVIEW AND PETITION TO ORAL ARGUMENT

TO THE HONARABLE COURT:

Come now co defendant, Lilly del Caribe, Inc., Eli Lilly Industries, Inc. (hereinafter referred to as the "Plan"), through their undersigned attorneys, and very respectfully states and pray as follows:

II. Introduction

On September 25, 2003, plaintiff filed a Request for Review and Petition for Oral Argument (hereafter, "Request for Review") requesting in essence, the following: 1) the committee and Appeals Committee decisions be set aside; 2) Plaintiff be granted long-term disability benefits; 3) plaintiff be relief of her contractual obligation describe in paragraph 4 of the Settlement

Agreement signed by the parties and; 4) that attorney's fees and any other relief that the Court deem proper be granted.

Plaintiffs allege that defendants acted arbitrarily and capriciously in denying Ms. Cintrón disability benefits. See, Request for review, at page 8. Plaintiffs included in their motion a description of facts summarizing actions by Lilly's Benefits Plan Review Committee ("Committee") and Employee Benefits Committee on which they based their contentions.

Plaintiffs' description is distorted and incomplete. Below is a detailed chronology of events that led to the denial of plaintiff's request for extended disability benefits. As described below, Ms Cintrón failed to provide necessary information to support her request for disability benefits. Defendants respectfully assert that based on the facts of this case, despite plaintiffs' desire to the contrary, under the arbitrary and capricious standard of review, the decision-maker's determination to deny Ms. Cintrón extended disability benefits should be upheld, inasmuch as it was within its authority, reasoned, and supported by substantial evidence in the record. Leahy v. Raytheon, 315 F.3d 11, 17 (1st Cir. 2000); Doyle v. Paul Revere Life Ins. Co., 144F.3d 181, 183-184 (1st Cir. 1998); Donaho v. FMC Corporation, 74 F.3d 894 (8th Cir. 1996). In the Black & Decker Disability Plan v. Nord, 123 S.Ct 1965, 67-68 (2003), the United States Supreme Court ruled that the "treating physician rule" is not applicable in ERISA claims and determine that "courts have no warrant to require administrators automatically to accord special weight to the opinions of a claimant's physician; nor may courts impose on administrator a discrete burden of explanation when

they credit reliable evidence that conflicts with treating physician's evaluation."

Defendants, however, reserve the right to address plaintiffs' legal contentions in due time should this Honorable Court deem it appropriate.

III. Chronology of Events

1. As per Settlement Agreement signed by the parties on August 14, 2002, co-plaintiff Kenia Cintrón agreed to submit her claim for extended disability to the Committee within sixty (60) days after the execution of the Settlement Agreement subject to the requirements established by the Lilly Extended Disability Plan and the Lilly Employee Welfare Plan.

2. On August 16, 2002, Cintrón submitted her claim to the Committee, which was received by the Committee on August 19, 2002. See request for review Exhibit 1. Pursuant to section 6.02(b) the Plan, by letter dated September 23, 2002, the Committee requested that Ms. Cintrón undergo an independent medical evaluation by a neurologist and a psychiatrist to assist the Committee in completing its evaluation of her claim. To provide flexibility fro Mrs. Cintrón three (3) physicians in each discipline for her to choose the one she preferred. See Request for Review, Exhibit 3.

3. In response, on September 26, plaintiff sent a letter to the Committee questioning its authority to request that she received independent medical evaluations, and requested that the Committee inform her of the information necessary to complete her claim. See Request for Review, Exhibit 3.

4. By correspondence dated October 2002, the Committee notified Ms. Cintrón a thirty (30) day extension for the Committee to render its decision, pursuant to paragraph seven (7) of the Settlement Agreement. The extension was required due to matters beyond t5he Committee's control, to allow Ms. Cintrón to submit to the requested independent medical evaluation or decline the request and leave the matter to be decided based on the information previously submitted by Mrs. Cintrón. The Committee advised Ms. Cintrón that the independent evaluations were warranted because there appeared to be several areas of poor correlation between her reported symptoms and the diagnostic studies provided by her. Ms. Cintrón was requested to provide the Committee her election of the preferred option within ten (10) days to give enough time for arrangements to be made with the physicians and sufficient time to be allowed for them to render a report and for the Committee to consider them. See, Request for Review, Exhibit 4.

5. By letter dated October 12, 2002, Ms. Cintrón provided additional reports to the Committee's request for the independent medical evaluations. See, Request for Review, Exhibit 5.

6. Subsequently, on October 21, plaintiff's counsel sent a letter to the undersigned requesting the following: 1) that the Committee again inform Ms. Cintrón of the need for an independen6t medial evaluation; 2) that the Committee select the doctors for the evaluation if they were necessary, since Ms. Cintrón would not select the doctors and; 3) that she be informed of the dates of the examination and she would appear to such evaluations. See Exhibit 1.

7. As requested by Ms. Cintrón, on October 28, 2002, Ms. Cintrón was informed of the two physicians selected to conduct the independent medical evaluation and the dates of those examinations: Dr. Carlos Luciano, Neurologist, for November 4, 2002, and Dr. Jorge Suria-Colón, for November 9, 2002. Pursuant to paragraph seven (7) of the Settlement Agreement, the Committee provided notice of an additional thirty (30) day extension for the Committee to render its decision to allow Ms. Cintrón to receive the scheduled medical evaluations and for the doctors to render their reports. See, Exhibit 2.

8. On November 4, 2002, Ms. Cintrón failed to attend the scheduled medical appointment with Dr. Carlos Luciano, Neurologist. Subsequently, the undersigned sent Ms. Cintrón's counsel a letter confirming a telephone conversation later that evening, in which plaintiffs' counsel explained that Ms. Cintrón was inquiring whether she was required to submit to the independent medical evaluations. The undersigned informed Ms. Cintron counsel that the issue had been address in prior correspondence, and that the independent medical evaluations were schedule based on Ms. Cintrón's request for the Committee to select the physicians. Given that Ms. Cintrón had failed to attend the scheduled appointment, plaintiffs' counsel indicated that he would consult his client to determine what she wanted to do next. Plaintiffs' counsel was reminded of the second appointment scheduled for November 9, 2002. See, Exhibit 3.

9. By letter dated November 8, 2002, Ms. Cintrón refused to undergo the independent medical evaluations. She also informed the Committee that she believed that the

Committee had not requested from her the additional medical information needed by the Committee to make a decision. See, exhibit 4. Under section 6.02(b) of the Plan the Committee may require an employee to submit to medical evaluations to determine the extent of a claimed illness or injury. The Committee may require the employee to undergo such examination as often as reasonably necessary to determine whether the employee meets the definition of "disabled" under Section 2.01(a)(5) of the Plan.

10. On November 13, 2002, Ms. Cintrón submitted to the Committee a medical certificate from her treating psychiatrist, Dr. Héctor Torres. See, Request for Review, Exhibit 6

11. The Committee met on November 13, 2002 to review her claim for benefits and denied the request. The Committee was unable to verify her claimed disability and determined that she failed to provide the necessary information to support her entitlement to disability benefits pursuant to the terms of the Plan.

12. Ms. Cintrón was informed by letter dated December 2, 2002 of the Committee's decision. Plaintiff was informed of the specific reasons for the denial of her extended disability benefits and was informed of her right to appeal said decision within 180 days of her receipt of this letter. See Request for Review, Exhibit 8.

13. Ms. Cintrón wrote to the Employee Benefits Committee on April 30, 2003 requesting certain information regarding the basis for the Committee's denial and expressing her intention of eventually filing an appeal. See request for Review, Exhibit 10.

14. On May 29, 2003, plaintiff filed her appeal before the Employee Benefits Committee ("EBC"). See, Request for Review, Exhibit 12.

15. By letter dated June 5, 2003, the EBC acknowledge receipt of Ms. Cintrón's appeal and informed her that it would review her claim at its next scheduled meeting on June 23, 2003. Plaintiff was further informed that she should submit any additional information to the EBC before June 16, 2003, so that it could be considered. See, Request for review, Exhibit 11.

16. On July 3, 2003, the EBC informed Ms. Cintrón that it had met on June 23, 2003 and that after a review of the information provided by plaintiff as part of her appeal, it was unable to verify her claimed disability. To further evaluate her appeal, the EBC requested that Ms. Cintrón receive an independent medical evaluation by both a neurologist and a psychiatrist. Once again, Ms. Cintrón was provided with a list of three (3) physicians in each discipline for her to chooser to have the physician selected for her. Plaintiff was advised that should she refuse to submit herself to the independent medical evaluations, the EBC would be required to review her appeal without such information and might deny her request based on her failure to comply with the terms of the Plan or because it lacked necessary information to confirm her claimed disability. The EBC's need for a forty-five (45) day extension, to render its decision consistent with Section 6.05(b) of the Plan. Plaintiff was further informed that the EBC would make its decision following the receipt of plaintiff's independent medical reports or no later than the

end of the forty (45) day extension period, whichever was earlier. See, Request for Review, Exhibit 13.

17. By letter dated July 16, 2003, Ms. Cintrón outlined alleges discrepancies between the request made by the EBC in the July 3, 2003 letter and Section 6.02(b) of the Plan. For example, Ms. Cintrón was concern that the Plan did not specifically refer to "independent medical evaluation" or define that term. Ms. Cintrón did not choose any of the physicians to see or agree to receive the independent medical evaluations. See Request for Review, Exhibit 14.

18. On August 22, 2003, the EBC contacted Ms. Cintrón by phone to determine whether she had undergone any of the independent medical evaluations or planned to do so. At that time, Ms. Cintrón indicated that she had not received the requested independent medical evaluations. In a letter dated August 25, 2003 the EBC advised Ms. Cintrón of the possibility that the EBC extend the ninety (90) day review period provided in Section 6.05(b) of the Plan fro an additional thirty (30) days, up to and including September 26, 2003, for the Committee to decide her appeal if she wanted to received the independent medical evaluations. The EBC further informed plaintiff the following:

> "As describe in the Committee's July 3, 2003, correspondence to you, the Committee requested (as did the Benefit Plan Review Committee before it) that you see a neurologist and a psychiatrist so that the Committee could further evaluate your claim for disability benefits. In response, you claimed that the Committee was modifying the Plan's requirements and questioned the Committee's authority to request

> an independent medical evaluation. Moreover, you indicated in your July 16 correspondence that you would not comply with the Committee's request without imposing additional conditions (e.g. requiring a medical questionnaire for your physicians). Last Friday, you confirmed that you had not seen any of the physicians outlined in the Committee's July 3 correspondence. You did, however indicate, your willingness now to see such physicians as long as you did not have to choose them. While you previously indicated willingness to the Benefit Plan Review Committee to see physicians if it choose them and later failed to attend scheduled appointments with the selected physicians, the Committee is willing to agree to your request. Because of the Committee's requirement to respond to your appeal within the timeframe stated in the Agreement, however, it is not possible for you now to attend physician appointments without extending the stated deadline in the Agreement."

Therefore the EBC once again allowed Ms. Cintrón the option for her to attend the independent medical evaluations so that the EBC could consider such information to evaluate her claim. The EBC requested that Ms. Cintrón return a letter confirming her agreement if she wanted additional time to receive the medical evaluations. See, Request for Review, Exhibit 16.

19. On that same date, Ms. Cintrón responded to the EBC by again questioning the EBC's authority to request

that she receive independent medical evaluations. See request for Review, Exhibit 15.

20. By letter dated August 25, 2003, Ms. Cintrón refused to extend the review period so that she could received the independent medical evaluations requested by the EBC. Request for Review, Exhibit 17, at page 2.

21. By correspondence dated August 27, 2003, the EBC denied Ms. Cintrón's request for disability benefits. The EBC was unable to verify her claim disability and determine that Ms. Cintrón failed to provide necessary information to support her entitlement to disability benefits as required by the Plan. Additionally, the EBC concluded that there were several areas of poor correlation between Ms. Cintrón reported symptoms, including the severity of her symptoms and the diagnostic studies provided by her. Moreover, Ms. Cintrón refused to comply with the Committee's request that she received two independent medical evaluations. See, Request for Review, Exhibit 18.

IV. Conclusion

Based on the foregoing, plaintiffs' Request for Review should be denied. As described in the chronology above, Ms. Cintrón refused to take the necessary steps to allow the Benefit Plan Review Committee and the Employee to evaluate her request. Both the Benefit Plan Review Committee and Employee Benefit Committee acted all times in good faith and consistent with both the Settlement Agreement and the provisions of the Plan. In light of the above, there is no question that Lilly's decision to deny plaintiff's extended disability benefits was supported by substantial evidence on the record, and that its decision was not arbitrary or capricious.

This Honorable Court should not condone plaintiff's defiant attitude and distrust through out this process as part of her efforts to side step the provisions of the Plan and the agreements reached between the parties. Defendants have always acted in good faith and Lilly's Benefit Plan Review Committee and the Employee Benefits Committee's denial of Ms. Cintrón extended disability benefits as discussed in this motion was a direct result of her own actions.

WHEREFORE, the appearing defendants respectfully request that plaintiffs' Request for Review and Petition for Oral Argument be denied.

In San Juan, Puerto Rico, this 27th day of October, 2003.

WE HEREBY CRETIFY: That on this same date true and exact copy on this document was sent by regular mail to Jesús Hernández Sanchez, Esq., and/or Guillermo Macari, Esq., Hernández Sánchez Law Firm, First Bank Building, Suite 806, 1519 Ponce de León Ave., San Juan, Puerto Rico 00909-1791 and Kenia M. Cintrón Parrilla and Miguel A. García Méndez, P.O. Box 232, Naguabo, Puerto Rico 00718-0232.

SCHUSTER USERA & AGUILÓLLP
PO Box 363128
San Juan, Puerto Rico 00936-3128
Telephone: (787) 765-4646
Telefax: (787) 765-4611

By: /s/ Lizette Vélez Rivé
Lizette Vélez Rivé
USDC PR No. 209002
lvelez@suas.net

Exhibit 1

HERNÁNDEZ SÁNCHEZ LAW FIRM
First Bank Bldg., Suite 806-810
1519 Poce de León Ave.
San Juan, Puerto Rico 00909-1791
Tels. (787) 722-5813
722- 5814, 722-5819,
722-5897
Fax. 725-1112

San Juan, PR
October 21, 2002

Gregory T. Usera, Esq.
Bufete Schuster, Usera & Aguiló
PO Box 363128
San Juan, PR 00936-3128

Re: Kenia M. Cintrón v. Lilly

Dear Mr. Usera:

As per written instructions of my client Mrs. Kenia M. Cintrón, thru a letter she mailed to me dated October 17, but received today October 21, I am informing you as follows:

1. That the Committee should inform her if they need a medical evaluation in addition to the medical evaluation she already mailed to the Committee, in order for the Committee to make a decision.
2. That if there is a need from the Committee to request such evaluation, the Committee and/or Lilly should select the doctors for the evaluation because she is not willing to participate in the selection of the doctors chosen by Lilly and/or the Committee who are going to evaluate her .

3. That as soon as the Committee and/or Lilly inform her the name and the address of the doctors chosen, she should be informed by the Committee and/or Lilly the date or dates of examination and she will appear to be examined before such doctors.
4. In summary, just inform Mrs. Cintrón, to which doctors selected by Lilly and/or the Committee she have to appear for examination if the Committee is of the opinion that there is a need for further medical evaluation in addition to the medical evaluation she already mailed to the Committee.

Cordially yours,

/s/ Jesús Hernández Sánchez
Jesús Hernández Sánchez

Exhibit 2

SCHUSTER USERA & AGUILO LLP
Counsellors at Law
PO Box 363128, San Juan, Puerto Rico 00936-3128
GREGORY T. USERA ELECTRONIC MAIL
DIRECT DIAL (787) 765-4841 GUSERA@SUAS.NET

October 28, 2002

VIA FAX 787 725-1112
Lcdo. Jesús Hernández Sanchez
Suite 806-810
First Federal Savings Bldg. Parada 23
Santurce. Puerto Rico 00909

Re: Kenia M. Cintrón v. Lilly

Dear Mr. Hernández .Sánchez:

I received your Letter dated October 23, in which you stated your client willingness to submit to independent medical evaluations as outlined in my previous letter to you, although your client is unwilling to actually select the physicians who would evaluate her.

Based on your request and under §602(b), the Plan has designated the following physician to conduct the evaluation: Dr. Carlos Luciano and Dr, Jorge Suria Colón. The appointments, times and Location are as follows:

Carlos Luciano, M.D., Neurologist	Clínica Las Ameritas Suite 402 Hato Rey, Puerto Rico Tel. 787- 767-2248	Monday, November 4, 2002, at 8:30 am

Jorge Suria Colón, M.D., Psychiatrist	Calle Aguas Buenas, B10 #4, Santa Rosa, Bayamón, Puerto Rico Tel. 787-787-4640	Saturday, November 9, 2002, at 9:00 am

As you recall, pursuant to paragraph (7) of the Settlement Agreement executed between the parties, the Lilly Plan Review Committee ("Committee") had 45 days after your client provided the relevant information to render a decision. Mrs. Cintrón submitted information received on August 19, 2002, and the period expired October 3. As you recall, notice of extension of 30 days was provided on September 26, and we do so again, for the same reasons outlined then, to wit, to submit your client to independent medical evaluations ('IME") as suggested, and allow the doctors to render reports to Dr. Felix Matos. Since the Committee does not control the timetable for Ms. Cintrón to submit to the IME and for the doctors to render reports to Dr. Felix Matos, this additional extension is due to matters beyond the Committee's control. The new period would expire December 2.

Thank you in advance for your attention to this matter.

Very truly yours,

/s/ Gregory T. Usera

Gregory T. Usera

cc: Felix Matos
Charles Grandy
Lizette Veléz-Rivé

Exhibit 3

SCHUSTER USERA & AGUILO LLP
Counsellors at Law
PO Box 363128, San Juan, Puerto Rico 00936-3128
GREGORY T. USERA ELECTRONIC MAIL
DIRECT DIAL (787) 765-4841 GUSERA@SUAS.NET

November 4, 2002

VIA FAX 787 725-1112
Lcdo. Jesús Hernández Sanchez
Suite 806-810
First Federal Savings Bldg. Parada 23
Santurce. Puerto Rico 00909

Re: Kenia M. Cintrón v. Lilly

Dear Mr. Hernández .Sánchez:

In our telephone conversation of this evening you informed that your client had sent you correspondence inquiring whether her submitting to an IME is mandatory. I had addressed the issue in prior correspondence, and upon your reply stating you wanted the Plan to select the physicians, the IMEs were set up, the first this morning. You were so notified in my letter of October 28. Your Client did not attend the scheduled appointment.

Upon your client's failure to appear and my notice of this fact to you this morning, this evening you called and indicated that you would write your client to ascertain what she wanted to do next. Since, as I informed in my October 28 letter, another appointment is scheduled for Saturday, November 9, I would appreciate prompt indication from

your client so that I can cancel the appointment, if necessary.

Thank you in advance for your attention to his matter.

Very truly yours,

/s/ Gregory T. Usera

Gregory T. Usera

cc: Felix Matos
Charles Grandy
Lizette Veléz-Rivé

Exhibit 4

HERNÁNDEZ SÁNCHEZ LAW FIRM
First Bank Bldg., Suite 806-810
1519 Poce de León Ave.
San Juan, Puerto Rico 00909-1791
Tels. (787) 722-5813
722- 5814, 722-5819,
722-5897
Fax. 725-1112

San Juan, PR
November 8, 2002

Gregory T. Usera, Esq.
Bufete Schuster, Usera & Aguiló
PO Box 363128
San Juan, PR 00936-3128
Fax. 765-4611

As per our yesterday's conversation I am informing you that my client. Mrs. Kenia M. Cintrón, request from the Committee to inform her supplemental medical information, in addition to the medical information she send to the Committee, is needed to make a decision concerning her application for disability. She says that the Committee has not requested from her specifically the additional medical information the Committee needs. Also, she is of the opinion that the Committee should call her or write her directly concerning such matter instead of using Lilly's attorneys so that the information will get faster to her.

She also has taken the position that she will not submit herself to the doctors selected by Lilly for examination.

In view of the above, please tell the Committee to notify directly to Mrs. Cintrón what additional medical

information it needs to make a decision concerning her application.

Cordially yours,

/s/ Jesús Hernández Sánchez
Jesús Hernández Sánchez

APPENDIX AD

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRÓN PARRILLA, et al.,
Plaintiffs,
v. Civil No. 99-1229 (JAF)
ELI LILLY INDUSTRIES, INC., et al.
Defendants

MOTION FOR RECONSIDERATION UNDER RULE 59 (e) AND VERY RESPECTFULLY REQUEST TO THE HONORABLE COURT TO GIVE IN WRITING THE REASONS WHY THE COURT DENIED PLAINTIFF'S REQUEST FOR REVIEW

TO THE HONORABLE COURT:

Come now plaintiff through the undersigned counsel and very respectfully state and pray:

1. That plaintiff requested review, as per the Agreement signed between the parties, of the decision on of the Defendant's Appeal Committee denying plaintiffs request for long term disability. Defendant opposed plaintiff's petition for review. This Honorable Court on November 20, 2003 issued and Order which was received and filed by the Clerk's Office on November 24, 2003. Such order was mailed by the clerk to plaintiffs attorneys and received in our office on November 26, 2003.

2. That this Honorable Court, in the order mentioned above, did not give its reasons why it denied plaintiff s petition and only wrote the word: "Denied"

3. That the undersigned attorney met yesterday December 2, 2003 with plaintiffs and they requested from the undersigned attorney two things:

a. To ask this Honorable Court the reasons it had to deny their petition so that they could be in a position to appeal the denial of this Honorable Court if they so wish.

b. To request reconsideration of the denial.

4. That plaintiff request reconsideration of the denial described above under Rule 59(e) of the Federal Rules of Civil Procedure for the following reasons:

a. In the Opposition filed by defendants against plaintiffs REQUEST FOR REVIEW AND PETITION FOR ORAL ARGUMENT filed on September 25 of this year, defendants state as follows in page 10 of such Opposition: "there is no question that Lilly's decision to deny plaintiffs extended disability benefits was supported by **substantial evidence** on the record, and that its decision was not arbitrary or capricious.", our emphasis. Also, they add the following: "This Honorable Court should not condone plaintiff's defiant attitude and distrust through out this process as part of her efforts to side step the provisions of the Plan and the agreement reached between the parties. **Defendants have always acted in good faith** and Lilly's Benefits Plan Review Committee and the Employee Benefits Committee's denial of Ms. Cintron's extended disability benefits as discussed in this motion was a direct result of her own actions.", our emphasis.

b. The record shows that defendants decision in denying plaintiff request for extended disability is not supported by substantial evidence and also the record shows that defendants did not always acted in good faith. First of

all, plaintiff Kenia Cintron followed defendant's instructions when she was told by attorney Gregory T. Usera in a letter dated October 2, 2002 (See Exhibit #4 of Plaintiffs Request for Review) addressed to her attorney, Mr. Hernandez Sanchez that she have the choice of submitting herself to an INDEPENDENT MEDICAL EVALUATION (IME) or leave the matter to be decided base solely on the medical information she filed with the Employee Benefits Committee's and Lilly's Benefit Plan Review Committee. We quote from such letter the following:

> "I have been requested to notify you of the need for a 30 day extension for the Committee to render its decision. This short extension will allow your client to exercise **one of two options** (our emphasis) outlined in my letter of September 23: to submit to an independent medical evaluation ("IME") as suggested, and allow the physicians to render reports to Dr. Félix Matos; **or decline the suggestion to submit to an IME, leaving the matter to be decided based solely on the information your client submitted.",** our emphasis.

c. In view of defendant's instructions given through attorney Usera, there was bad faith from defendant's position to request an IME when plaintiff decided to file her petition for long term disability with the medical evidence she had obtained from the doctors that treated and examined her. The Committee penalized plaintiff for not submitting to an IME when she had been instructed that she had the option to file her petition with the medical evidence from

her own doctors. Therefore, there was bad faith from defendant.

d. In its opposition to plaintiff s request for review, defendants alleged that the denial of plaintiff's petition for extended disability benefit was supported by substantial evidence. This is a wrong conclusion. What actually the record shows is that there was substantial medical evidence on behalf of plaintiff Kenia Cintron, as the medical evidence filed by plaintiff in the present case indicates. For example, Dr. Tomas Hernandez who is a neurologist who examined plaintiff (See Exhibit No.2 page 9) diagnosed plaintiffs condition and concluded that her prognosis was as follows:

> "Considered to be extremely poor. I still consider this patient to be totally and permanently disabled to perform any gainful occupation.", our emphasis.

e. Dr. Hector L. Torres, psychiatrist, diagnosed plaintiffs psychiatriccondition as follows "DEPRESION MAYOR SEVERA (MAYOR DEPRESSION, SEVERE). He adds as follows:

> "La respuesta a la medicación es muy pobre. Esto hace que no tenga habilidad competitiva laboral y sea una completamente nula. Su incapacidad es una total y permanente"[1]. See Exhibit 2 page 53 of plaintiff's Request For Review.

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[1] "Plaintiff response to medication is very poor. This has the effect that the patient does not has competitive labor ability and the same is completely null. Patient incapacity is total and permanent." (Our translation).

f. Again Dr. Hector Torres, psychiatrist, at page 58 of Exhibit 2 says as follows:

> "La incapacidad de esta paciente es total y permanente para realizar trabajo remunerativo alguno, su incapacidad es una total, reversible y progresiva. Por lo que me reafirmo en lo dicho en mi anterior informe con fecha de 24 de agosto de 98."[2]

g. The Social Security Administration, based on the medical record plaintiff filed with the agency, found plaintiff totally disabled beginning on June 18, 1997 and unable to make a vocational adjustment to work in the national economy. See Exhibit No.2, page 66 of plaintiffs Request For Review. In its decision of July 15, 1999 the Administrative Law Judge, Mr. Ramon E. Quinones, decided that Mrs. Kenia Cintron was totally disabled and unable to return to her former job. (See page 67 of Exhibit 2) The Administrative Law Judge concluded as follows concerning Mrs. Cintron alleged pain and emotional distress: her subjective complaints of pain and emotional distress, as alleged in the record are consistent with the medical evidence, Avery v. Secretary of HHS, 797 F2d 19 (1st Cir. 1986) and Social Security Ruling 96-7P. The claimant's maximum sustained capacity to work has been reduced to less than full range of sedentary work. This capacity is further reduced by severe nonexertional limitations. This is well sustained by the record as a whole.

---

[2] "The incapacity of this patient is total and permanent to do any remunerative work. Her incapacity is total, irreversible and progressive. Therefore, I reaffirm myself in what I said in my prior medical report dated August 24 of 98." (our translation).

In view of these considerations the claimant cannot return to her PRW"... at page 65-66

In its decision the Administrative Law Judge also decided (See page 66 of Exhibit 2): "If the capacity to work is limited to less than full range of sedentary exertion, then section 201.00 (h), of Regulations No.4, mandates a finding of disabled," at page 66.

> "Considering the claimant's additional non exceptional limitations within the framework of the above-cited section, she cannot be expected to make a vocational adjustment to work which exists in significant numbers in the national economy," idem.
>
> "The claimant has been under a disability as defined by the Social Security Act and Regulations since June 18, 1997 (20 CFR 404.1520 (f)," idem.

We call the attention to this Honorable Court of the findings of the Administrative Law Judge at page 66 and 67 of Exhibit 2 before cited[3].

h. Defendants cited the case of Black & Decker Disability Plan v. Nord decided by the U.S. Supreme Court on May 27, 2003, 23.8. Ct. 1965 (2003). In that case the Supreme Court decided that the "treating physician rule" is not applicable in ERISA claims. Also, it decided that administrators of retire plans cover by ERISA are not obliged to automatically accord special weight to the

---

[3] This Honorable Court should take judicial notice of the Federal Law covering social security applications for disable employees. The law requires that a petitioner requesting social security benefits, because of sickness, should be in a physical and/or emotional condition where he or she cannot engage in "any gainful occupation". Precisely, this is the emotional and physical condition of Mrs. Kenia Cintrón.

opinions of claimant's physician; nor may courts impose on administrators a discrete burden of explanation when they credit reliable evidence that conflicts with a treating physician's evaluation."

We have read that case and the same is not applicable to the facts of Mrs. Kenia Cintron's application for long term disability

This is so for the following reasons:

1. The administrator had given Mrs. Kenia Cintron the right to choose between submitting her case exclusively with the medical evidence of her treating and consulting physicians or to submit herself to an Independent Medical Evaluation. Therefore, if the plan gave Mrs. Cintron the right to choose, it acted capriciously and arbitrarily when requested Mrs. Cintron to submit to an Independent Medical Evaluation. Again, we call the attention of this Honorable Court to attorney Usera's letter of October 2, 2002 (See Exhibit 4 of Mrs. Cintron Petition For Review) where Mr. U sera, speaking for the PLAN, requested the need of a 30 days extension for the Committee to render its decision. Mr. Usera said and we quote again, because it is important to show to the court that the case of Black & Decker Disability Plan, supra, do not apply to Mrs. Cintron facts. Mrs. Cintron was told by Mr. Usera the following:

> "This short extension will allow your client to exercise one of two options outlined in my letter of September 23: to submit to an independent medical evaluation ("1ME") as suggested, and allow the physicians to render reports to Dr. Felix Matos; or, decline the suggestion to submit to an IME, leaving

> the matter to be decided based solely on the information your client submitted," our emphasis.

In the case of Black & Decker the facts were different, because employee Nord, who had apply for disability with his employer, was submitted for an independent examination with neurologist Dr. Antoine Mitri who concluded that Nord could perform "sedentary work with some walking interruption in between". In Mrs. Cintron case, there was not an Independent Evaluation because the PLAN, as already demonstrated before, gave Mrs. Cintron the right to choose. Therefore, the only medical evidence which the Eli Lilly Plan had was the evidence of Mrs. Cintron's treating and consulting physicians. We submit to this Honorable Court, that under the facts of Mrs. Cintron's case, the PLAN had no other alternative but to grant Mrs. Cintron application for long term disability. This is so because the scientific medical evidence filed by Mrs. Cintron with the PLAN leave no doubt that she was totally disable. Therefore, the PLAN acted arbitrarily and capriciously because it rejected the opinion of 21 physicians and had authorized Mrs. Cintron not to submit to an Independent Medical Evaluation. If the PLAN made a mistake to allow Mrs. Cintron to submit her case without submitting to an Independent Medical Evaluation, Mrs. Cintron should not pay for such mistake.

i. Mrs. Cintron met the definition of the word Disability as defined in Subsection 2.0 (a) (5) of the Eli Lilly Plan. Such section define Disability as follows:

> "the inability of an employee to engage for remuneration or profit in any occupation commensurate with the employees education,

> training and experience, provided that the inability results from an illness or accidental bodily injury that requires the employee to be under the regular case of a License Physician."

First of all, Mrs. Cintron is under regular care of a license physician. See Exhibit No. 14, page 3, of her Petition for Review. She informed the Committee that Dr. Tomas Hernandez. neurologist and Dr. Hector L. Torres, psychiatrist, were the physicians providing her with regular care. She also informed the Committee that her disability commenced on June 18. 1997.

j. There was no "substantial evidence" on the record to sustain the appeal committee's decision denying Mrs. Cintron application for long term disability. To the contrary, there was substantial medical evidence in the record to support a finding that Mrs. Cintron qualified to receive the approval of a Long Term Disability as shown by the numerous medical reports Mrs. Cintron filed with the Committee. Based on the record as a whole, defendants acted in a negligent, capricious and arbitrary manner. We explain ourselves. First, the PLAN told her she could submit her claim exclusively with the medical record she had, without any obligation to submit herself to an Independent Medical Evaluation ("IME"). But afterwards, the Committee requested an IME backtracking when they saw the voluminous medical record she had submitted. Second, defendant wanted Mrs. Cintron to give her consent to amend paragraph nine (9) of the Agreement executed by the parties on August 14, 2002 and filed in this Hon. Court. Mrs. Cintron refused. Defendant had 90 days. as per the Agreement and section 2M of the PLAN, to decide Mrs.

Cintron appeal. So, the Committee had up to August 26 of 2003 to review Mrs. Cintron medical evidence and to make the final decision. In a haste (on August 25, the prior date) they requested such a 30 days extension but it was against the Agreement and the written language of the PLAN which ordered the Company Employee Benefit Committee to decide within 90 days of Mrs. Cintron Appeal. The Committee did nothing during 89 days. See Exhibit 16 of Mrs. Cintron Petition For Review which is a letter signed by Mr. Charles A. Grandy requesting Kenia to allow the Amendment of the AGREEMENT.

k. The Committee and attorney Lissette Velez Rivé, counsel for the PLAN, put emphasis in their opposition to Mrs. Cintron Request For Review that she refused to submit herself to an Independent Medical Evaluation. We have to explain this because this Statement is misleading. Let's explain why: first, the Appeal Committee limited itself to give Mrs. Cintron the name of some physicians to whom she was supposed to report not withstanding the fact that according to the PLAN and to the Agreement signed the by the parties, was the Committee's responsibility to select the physicians, fix the date of the appointment, notify Mrs. Cintron such date of the appointment and also the name of the physician she was supposed to see for examination. This was not done by the Committee in violation of the PLAN and of the Agreement. The Appeal Committee only gave Mrs. Cintron the name of the physicians. Based on this lack of diligence from the Committee, Mrs. Cintron was unable to go to any of the examination. But there is more, because it has been already shown that the PLAN gave Mrs. Cintron her option to submit her case only with the medical evidence she had

filed with the Committee. The Committee took advantage of this confusion and decided to deny Mrs. Cintron application, making the conclusion that she "failed to provide necessary information to support her request for disability benefits." This was a wrong conclusion of the Committee because Mrs. Cintron filed medical reports from about 21 physicians, plus the determination of the Social Security Administrative Law Judge who decided that Mrs. Cintron was incapacitated and she could not go back to work to her former job, neither she was able to perform any gainful occupation in the work market. We submit to this Honorable Court the view that under the circumstances described before, having elapsed the time the PLAN had to request an examination of Mrs. Cintrón, it was the obligation of the Committee to decide on behalf on Mrs. Cintron because there was **substantial medical evidence** in the record showing that she was totally incapacitated. It was a wrong conclusion from the Appeal Committee to had decided that Mrs. Cintron failed to provide necessary information to support her request for disability benefits and also, it was a wrong conclusion to have also concluded "that there appear to be several areas of poor correlation between your reported symptoms, including the severity of your symptoms, and the diagnostic studies you provided." We said this because Mrs. Cintrón had filed with the Appeal Committee substantial medical evidence to prove otherwise, and also the decision of the Social Security Law Judge. Although the U.S. Supreme Court in the case of Black & Decker, supra, decided that ERISA PLAN Administrators do not have to follow a "treating physician rule", defendant is in estoppel to request this Honorable Court to apply such rule against all the medical evidence

Mrs. Cintron's filed with the PLAN, because it gave Mrs. Cintron the right to submit her claim only with the medical evidence of her own physicians. See Exhibit 4 of her Petition For Review. Very respectfully we request from this Honorable Court to apply to defendant the doctrine of equitable estoppel or estoppel by negligence or estoppel by representation. How come attorney Usera wrote a letter (See Exhibit 4) notifying that Mrs. Cintron was entitled to submit her claim only with the medical evidence she had obtained and afterwards, when she complied with such instructions, she is then requested that she had to submit herself to an Independent Medical Evaluation? Defendants had no evidence that the physicians that examined Mrs. Cintron, were biased against the PLAN and in favor of Mrs. Cintron. This is also, an uncontested fact.

l. In addition of the above, the Appeal Committee never provided Mrs. Cintron with a curriculum vitae of the physicians, she was told to see for medical evaluation. Therefore, the PLAN did not provide Mrs. Cintron with sufficient information about the physicians so she could made an intelligent decision as to which one of them to see. This is an uncontested fact. Moreover, in her letter of July 16 of 2003 to the Committee (See Exhibit No. 14 page 2 she says: "Kenia will only undergo to medical evaluations as per required and stated under section 6.02 (b) of the Plan. The Plan do not say anything about an Independent Medical Evaluation and even more, did not answer Mrs. Cintron doubts expressed in such letter to the Committee. It was not until August 25 of 2003 that Mrs. Cintron was asked to allow the Amendment of the Agreement filed in court.

m. The record before this Honorable Court shows that Mrs. Cintron requested from Mr. John J. Purcell orientation about certain doubts she had. (See Exhibit No. 14)

n. In the Statement Under Penalty of Perjury signed by Mrs. Cintron and which was made part of her Petition For Review (See Exhibit No. 1 page 6) Mrs. Cintron states at paragraph 9 as follows:

> "The Appeals Committee did not answer my letter of July 16, 2003, nor they informed me of the doctor that I was to report to for the examination, then through a telephone call I received on Friday, August 22,2003, at approximately 3:30 p.m. from one who identified himself as Charlie Grandy (he even spelled his last name to me) he requested from me to give the Appeals Committee another extension of thirty days to inform me to which doctor I was supposed to report for examination (See Exhibit 15). The Appeals Committee had already used its extension term of 45 days as stated by the Plan. That is, the thirty day extension was beyond what the Plan authorized for the Appeals Committee to reach a decision. Notwithstanding this capricious request for extension I was always willing to undergo the medical evaluation, but as stated under section 6.02 (b) of the Plan which does not contemplate to choose a specialist from a list nor an independent medical evaluation (IME). Neither the Committee nor the Appeals Committee explained to me what was an independent medical evaluation, but I understood as per my study of the

Employee's Manual (Manual del Asociado), which is not part of the Plan, that a decision of an IME was to be taken as fimal by both Committees because I thought that the procedure they were using was of the Employee's Manual and not the procedure of the Plan. The procedure of the Plan was clear to me because section 6.02 (b) of the Plan clearly establishes that they were supposed to choose a doctor and tell me to go to that doctor for examination, but the Committee was following the same procedure of the Employee's Manual; according to which, in case of incompatibility or difference a certification by a third doctor selected by both was to be considered final. In addition, in one occasion Dr. Felix Matos, Lilly's in- house doctor, told me about an evaluation of the specialist selected by both that it was supposed to be final. This explanation from Dr. Matos came to my mind when I was told to select the specialists and to submit to what the Committee called an IME. Also, in a letter of October 2, 2002 signed by attorney Gregory T. Usera (Exhibit 4) I was informed that the medical evaluation to be made by the doctor out of the three to be chosen, was going to be send to Dr. Matos and not to Mr. Purcell who was my contact according to the Agreement. I thought that if it was going to be sent to Dr. Matos then the report would be final.

o. We respectfully submit to this Honorable Court that our motion should be granted to prevent a manifest injustice. (See Landrau-Romero v. Banco Popular De Puerto Rico, 212 F. 3d 607,612). We are not requesting

from this Honorable Court to provide Mrs. Cintron with an opportunity for a "second bite at the apple" (See Sequa Corp. v. GBJ Corp.,) 156 F.3d 136 2nd Cir. (1998).

WHEREFORE, it is respectfully requested from this Honorable Court the following:

1. To reconsider its denial of Mrs. Cintron Petition For Review and base on the total substantive evidence on the record, revoke the Committee's denial of Mrs. Cintron application for long term disability.

2. In the alternative, if this Honorable Court maintains its decision of denying Mrs. Cintron Petition For Review, then Court should proceed to issue and order where this Honorable Court give the legal and factual reasons of such denial so that Mrs. Cintron will be able to make an informed and intelligent decision of whether to appeal or not the order.

CERTIFICATION: It hereby certify that a copy of this motion for reconsideration is being mailed to the Law Firm of Schuster, Usera & Aguiló, PO Box 363128 San Juan, Puerto Rico 00936-3128 which is the law finn representing defendant, because sister counsel Lizette Vélez Rivé resigned as counsel for defendant.

In San Juan, Puerto Rico this 5 of December of 2003.

HERNANDEZ SANCHEZ LAW FIRM
1519 PONCE DE LEON AVE.
FIRST BANK BLDG., SUITE 806
SANTURCE, PR 0090-1791
TELS. (787) 722-5814/5813
FAX (787) 725-1112

/s/ Jesus Hernandez Sanchez
By: Jesus Hernandez Sanchez
217803

/s/ Guillermo Macari
By: Guillermo Macari
206308

APPENDIX AE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRÓN PARRILLA, et al.,
PLAINTIFFS,

v. CIVIL NO. 99-1229 (JAF)

ELI LILLY INDUSTRIES, INC., et al.
DEFENDANTS

MOTION REQUESTING OUR MOTION FOR RECONSIDERATION BE DENIED OR GRANTED

TO THE HONORABLE COURT:

Come now plaintiff through the undersigned counsel and very respectfully state and pray:

1- That this honorable court issued an order dated 12-17-03 and filed and entered on Dic. 19 and mailed on Dic. 22. In such order this Honorable Court did not address our motion for reconsideration. It only addressed part of such motion concerning our request to give in writing the reasons why the court denied plaintiff's request for review.

WHEREFORE, it is respectfully requested from this Honorable Court to grant or deny our motion for reconsideration under rule 59(e).

CERTIFICATION: It hereby certify that a copy of this motion for reconsideration is being mailed to the Law Firm of Schuster, Usera 7 Aguiló, PO Box 363128 San Juan, Puerto Rico 00936-3128 which is the law firm representing defendant, because sister counsel Lizette Vélez Rivé resigned as counsel for defendant.

In San Juan, Puerto Rico this 5 of December of 2003.

BUFETE HERNANDEZ SANCHEZ
FIRST BANK BLDG., SUITE 806
PONCE DE LEON AVE. #1519
SANTURCE, PR 00909-1791
TELS. (787) 722-5814
Fax (787) 725-1112

/s/ Jesus Hernandez Sanchez
By: Jesus Hernandez Sanchez
217803

/s/ Guillermo Macari
By: Guillermo Macari
206308

APPENDIX AF

IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRÓN PARRILLA, et al
PLAINTIFFS
V. CIVIL NO. 99-1229 (JAF)
ELI LILLY INDUSTRIES , et al,
DEFENDANTS

MOTION TO INFORM TO THE HONORABLE COURT THE WITHDRAWAL OF PLAINTIFF ATTORNEYS OF RECORD, TO REQUEST TIME TO HIRE PLAINTIFFS NEW LEGAL REPRESENTATION AND TO REQUEST THE EXTENSION OF THE PERIOD OF TIME TO FILE THE RECONSIDERATION AND APPEAL PROCESSES FOR THE DENIAL TO PLAINTIFFS REQUEST FOR REVIEW

TO THE HONORABLE COURT:

Come now plaintiffs, pro-se, respectfully state and pray:

1- That plaintiffs' attorneys of record, by a fax letter dated on December 29, 2003 and received on January 7, 2004, advised us to appeal the denial to plaintiffs Request for Review "pro-se or hired another attorney". Refer to Exhibit 1.

2- Plaintiffs' attorneys of record filed the following motions: REQUEST FOR REVIEW AND PETITION FOR ORAL ARGUMENT, MOTION FOR RECONSIDERATION UNDER RULE 59(e) AND VERY

RESPECTFULLY REQUEST TO THE HONORABLE COURT TO GIVE IN WRITING THE REASONS WHY THE COURT DENIED PLAINTIFF'S REQUEST FOR REVIEW, and MOTION REQUESTING OUR MOTION FOR RECONSIDERATION BE DENIED OR GRANTED.

3- Plaintiffs' attorneys of record only give us copy of the orders issued by the Honorable Court on 11-20-03 and 12-17-03, but did not give us copy of the reason for the denial to the REQUEST FOR REVIEW AND PETITION FOR ORAL ARGUMENT which "the reason appear from the record and are summarized in docket 93". Refer to Exhibits 2[1] and 3.

4- Yesterday, plaintiffs (Miguel A. García Méndez) went to the Honorable Court to request copy of the denial to the REQUEST FOR REVIEW AND PETITION FOR ORAL ARGUMENT, which "the reason appear from the record and are summarized in docket 93". Mr. García Méndez received from the Honorable Court the OPPOSITION TO REQUEST FOR REVIEW AND PETITION FOR ORAL ARGUMENT, dated the 27th day of October, 2003 and filed by the defendant attorneys the same date, as the documentation in docket 93. Refer to Exhibit 4.[2]

5- That plaintiffs need to hire a new attorney which will need enough time, as well as us, to meet, obtain the necessary information, evaluate this case and proceed with the possible legal action that may apply.

---

[1] For the content of this Exhibit 2 refer to Appendix F and Appendix AE.

[2] For the content of this Exhibit 4 refer to Appendix AC.

WHEREFORE, it is respectfully requested from this Honorable Court to extend the period of time required for the reconsideration and appeal processes, in order to grant the plaintiffs enough time to:

1- Hire a new attorney.

2- Meet and evaluate this case with the new hired attorney.

3- Allow the new hired attorney to obtain the necessary information related to this case.

4- Allow the new hired attorney to prepare and file the proper legal course of action that may apply.

5- Allow the new hired attorney to take and complete the proper course of action, which may include but not limited to submit any additional reconsideration argument and/or any supplementary actions that may be need to be filed, as an outcome of the evaluation of this case.

CERTIFICATION: It hereby certify that copies of this motion are being mailed to the Law Firm Hernández Sanchez, to the attention of Jesús Hernández Sánchez and Guillermo Macari, First Federal Bank, Suite 806-810, Stop 23, Ponce de León Avenue #1519, Santurce Puerto Rico 00909; and, the Law Firm of Schuster, Usera & Aguiló, P.O. Box 361228, San Juan, Puerto Rico 00936-3128, which is the law firm representing defendant, because counsel Lizette Vélez Rivé resigned as counsel for defendant.

In San Juan, Puerto Rico, this 8th of January of 2004.

/s/ Kenia M. Cintrón
Kenia M. Cintrón Parrilla
S.S. # 584-66-4691

/s/ Miguel A. García Méndez
Miguel A. García Méndez
S.S. # 583-80-1113

Exhibit 1

HERNÁNDEZ SÁNCHEZ LAW FIRM

December 29, 2003

First Bank Bldg., Suite 806-810
1519 Ponce de León Ave.
San Juan, Puerto Rico 00909-1791

Tels. (787) 722-5813
722- 5814, 722-5819,
722-5897
Fax. 725-1112

Ms. Kenia Cintrón Parrilla and Husband
P.O. BOX 332
Naguabo, PR 00718-232
Tel. (787) 874-0025
Fax.

Send by certified mail
#70022030000190358259
and receipt requested

Dear Mrs. Cintrón:

Herein I am including copy of the Honorable Judge José A. Fuste's order in relation to our MOTION FOR RECONSIDERATION UNDER RULE 59(e) AND VERY RESPECTFULLY REQUEST TO THE HONORABLE COURT TO GIVE IN WRITING THE REASONS WHY THE COURT DENIED PLAINTIFF'S REQUEST FOR REVIEW.

The order issued by Judge Fuste reads as follows: "The reason appear from the record and are summarized in docket 93. Judge Fuste did not rule on our motion for reconsideration under rule 59(e). Attorney Macari and myself believe that the judge should rule and such motion. Therefore, we are filing a motion requesting from him to give a ruling or an order either denying or granting the motion for reconsideration. I am including copy of such

motion, herein. On the other hand, if you are planning to appeal, we advised you to go ahead and appeal the denial of your Request for review. You have 30 days beginning December 23. You can do it pro-se (by your self) or hired another attorney to appeal you case. As you already know, the contract you signed with us do not include appealing to Boston your case. If you need any help, to appeal the case by yourself, please see me. I am willing to assist you partially.

Cordially yours,

/s/ Jesus Hernandez Sanchez
JESUS HERNANDEZ SANCHEZ

/s/ Guillermo Macari
GUILLERMO MACARI

Exhibit 3

HERNÁNDEZ SÁNCHEZ LAW FIRM
First Bank Bldg., Suite 806-810
1519 Ponce de León Ave.
San Juan, Puerto Rico 00909-1791
Tels. (787) 722-5813
722- 5814, 722-5819,
722-5897
Fax. 725-1112

San Juan, Purto Rico
November 26, 2003

Ms. Kenia Cintrón Parrilla and Husband
P.O. BOX 332
Naguabo, PR 00718-232
1 -787-874-0025

CERTIFIED # 7002 2030 0001 9035 8143
AND RETURN RECEIPT

Dear clients:

Herein I am enclosing the order of Honorable Judge José A. Fusté, who denied the motion by all plaintiffs to review the appeal committee and for oral argument. Please, come next Tuesday at 4:00 p.m. to our office fro a meeting concerning such order.

Cordially yours,

/s/ Jesus Hernandez Sanchez
JESUS HERNANDEZ SANCHEZ

/s/ Guillermo Macari
GUILLERMO MACARI

APPENDIX AG

Form 1.

Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court

United State District Court for the District of Puerto Rico
File Number 3:99-cv-01229-JAF
Kenia M. Cintrón Parrilla,
Miguel A. García Méndez,
Plaintiffs,
V. Notice of Appeal
Eli Lilly Industries, Inc.;
Eli Lilly del Caribe, Inc.;
and/or Lilly del Caribe, Inc.;
Eli Lilly Industries Health Welfare Plan
and Disability Plan; and/or Eli Lilly
Puerto Rico Extended Disability Plan;
Company X; Company Y; Company A;
Company B; Company C; Company D,
Defendants

Notice is hereby given that Kenia M. Cintrón Parrilla and Miguel A. García Méndez, plaintiffs, pro-se, in the above named case hereby appeal to the United State Court of Appeals for the First Circuit the following final judgments:

1- ORDER: "finding as moot [100] Motion to withdraw as Attorney; finding as moot [100] Motion for extension of time, finding as moot [100] Motion for extension of time. This case is close for all purposes",

docket: 102,

entered and filed: 02/25/2004,

re: "Motion to Inform to the Honorable Court the Withdrawal of Plaintiff Attorneys of Record To Request Time to Hire Plaintiffs New Legal Representation and to Request the Extension of the Period of Time to File the Reconsideration and Appeal Processes for the Denial to Plaintiff's Review" (plaintiffs, pro-se),

docket 100,

entered: 01/13/2004,

filed: 01/08/2004;

2- **ORDER:** "The motion for reconsideration has been properly documented and denied.",

docket: 101,

entered and filed: 02/25/2004,

Re: "Motion Requesting Our Motion for Reconsideration be Denied or Granted" (by plaintiffs),

docket: 99,

entered: 01/08/2004,

filed: 01/07/2004;

both orders pursuant to the following Court Orders and Judgment:

a- **ORDER:** "The reasons appear from the record and are summarized in docket 93",

docket 98

entered and filed: 12/19/2003,

re: "Motion for Reconsideration Under Rule 59(c) and Very Respectfully Request to the Honorable

Court to Give Us in Writing the Reasons Why the Court Denied Request for Review",

docket: 97,

entered: 12/09/2003,

filed: 12/08/2003;

b- **ORDER:** "Denied",

docket: 95,

entered: 11/24/03,

filed: 11/24/2003,

re: "Request for Review and Petition for Oral Argument" (by plaintiffs) to the Appeals Committee's denial decision,

docket: 90,

entered: 09/26/2003,

filed: 09/25/2003,

re: "Opposition to request for review and Petition for Oral Argument" (response by defendants),

docket 93,

entered: 10/28/2003,

filed: 10/27/2003;

c- **ORDER:** "The pending request by plaintiff to set aside the settlement and/or for settlement specific relief is **DENIED.**" "The Settlement Agreement requires full exhaustion of Eli Lilly's Disability Plan procedures. Until this is accomplished, the court will not consider relieving any part from the terms of the settlement. **IT IS SO ORDERED.**",

re: breach of Settlement Agreement

docket 88,

entered and file: 07/01/2003,
re: Motion hearing held, on 05/16/2003,
entered: 07/01/2003,
filed: 05/16/2003,
re: "Motion Requesting Urgent Hearing" (by plaintiffs, pro-se), breach to settlement agreement,
re: breach of Settlement Agreement
docket: 83,
entered: 04/28/2003,
filed: 04/25/2003;

d- **JUDGMENT**: "approving the Joint Motion seeking voluntary dismissal under the terms of the Sealed Agreement.", " This case is closed, subject to reopening for the limited review purposed contemplated by the parties.",
docket: 77,
entered and filed: 08/14/2002,
re: SEALED DOCUMENT,
docket: 76,
entered and filed: 08/14/2002;

entered in this action on the 22 day of March, 2004.

/s/ Kenia M. Cintrón /s/ Miguel A. García Méndez

Kenia M. Cintrón Parrilla and Miguel A. García Méndez
P.O. Box 232
Naguabo, PR 00718-0232

APPENDIX AH

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 04-1536

KENIA M. CINTRON-PARRILLA; MIGUEL A. GARCÍA MÉNDEZ; CONJUGAL PARTNERSHIP GARCIA CINTRON ET AL.,

Plaintiffs, Appellants,

v.

ELI LILLY INDUSTRIES, INC.; ELI LILLY INDUSTRIES, INC. Health, WELFARE AND DISABITITY PLAN; LILLY DEL CARIBE, INC.; COMPANY X; COMPANY Y

Defendants, Appellees.

Before

Torruella, Circuit Judge,

Campbell, Senior Circuit Judge,

and Selya, Circuit Judge.

ORDER OF COURT

Entered: May 5, 2004

Upon review of the record in this case, it appears that this Court may not have jurisdiction to consider the appeal. The notice of appeal, filed on March 22, 2004 in District Court No. 99-01229-JAF (D. P.R.), indicates that plaintiffs-appellants are challenging a series of orders entered on

February 25, 2004, December 19, 2003, November 24, 2003, July 1, 2003 and August 14, 2002. To the extent that plaintiffs- appellants seek to appeal from the December 19, 2003, November 24, 2003, July 1, 2003 and August 14, 2002 orders, the appeal is untimely. Fed. R. App. P. 4(a) (notice of appeal in civil case must be filed within thirty days of judgment or order appealed from)

Accordingly, it is hereby ordered that plaintiffs-appellants show case in writing, by **May 19, 2004** why this court has jurisdiction to consider their appeal from the December 19, 2003, November 24, 2003, July 1, 2003 and August 14, 2002 orders. The failure to take action by May 19, 2004 may lead to dismissal of that portion of the appeal for lack of diligent prosecution. Loc. R. 3(b).

By the Court
Richard Cushing Donovan

By: MARK R SYSKA
Chief Deputy Clerk

APPENDIX AJ

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 04-1536

KENIA M. CINTRÓN PARRILLA;
MIGUEL A. GARCÍA MÉNDEZ;
Plaintiffs-Appellants

v.

ELI LILLY INDUSTRIES, INC.; ELI LILLY INDUSTRIES, INC. HEALTH, WELFARE AND DISABILITY PLAN; LILLY DEL CARIBE, INC.; COMPANY X; COMPANY Y
Defendants-Appellees

MOTION IN COMPLIANCE WITH COURT ORDER

To the Honorable Court of Appeals:

COME NOW Plaintiffs-Appellants, pro-se, very respectfully state and pray as follows:

I. INTRODUCTION

On March 22, 2204, Plaintiffs-Appellants (pro-se) filed a Notice of Appeal to the Orders and/or Judgments filed on February 25, 2004, and pursuant to Orders and/or Judgements of December 19, 2003, November 24, 2003, July 1, 2003, and August 14, 2002, in District Court No. 99-1229-JAF. See Exhibit no. 1.[1] On May 10, 2004, Plaintiff-Appellants received an order, entered on May 5, 2004, from the Honorable Court of Appeals requesting to

[1] For the content of this Exhibit 1 refer to Appendix AG

"show cause, in writing by May 19, 2004, why this court has jurisdiction to consider their appeal from December 19, 2003, November 24, 2003, July 1, 2003, and August 14, 2002 orders." See Exhibit no. 2.[2]

II. CHRONOLOGY OF EVENTS

1. On August14, 2002 and pursuant to paragraph 9, 11, 12 and 17, among others, Plaintiffs-Appellants and Defendants-Appellees signed a confidential Agreement[3] subject to be reviewed by the Honorable Court. See Exhibit no. 3

2. On August 14, 2002, Honorable Judge Jose A. Fuste filed a Judgment (see Exhibits no. 4 and 4A)[4], in which stated:

> "The joint motion seeking voluntary dismissal **is approved under the terms of the Sealed Agreement**. This case is closed, **subject to reopening** for the limited review purpose contemplated by the parties."

3. On a letter dated December 2, 2002, mailed December 6, 2002 and received on December 11, 2002 and after failing to comply with the terms under the Agreement and the Eli Lilly Extended Disability Plan (the "Plan"), Defendants Appellees denied Plaintiffs-Appellants **benefits and rights** under the Agreement and the Plan.

4. On February 26, 2003, April 1, 2003 and April 25, 2003, Plaintiffs-Appellants (pro-se) filed the following: Motion, Motion Imploring Urgent Help From the

---

[2] For the content of this Exhibit 2 refer to Appendix AH

[3] Sealed Document

[4] For the content of these Exhibits 4 and 4A refer to Appendix C

Honorable Court and Motion Requesting Urgent Hearing, respectively, begging for help to annul the Agreement due to breach of agreement, among others, incurred by Defendants-Appellees. See Exhibits no. 5, 6 and 7.[5]

5. On May 2, 2003, Honorable Judge Jose A. Fuste filed an Order granting a hearing in which stated: "A hearing to delucidate these matters shall be held on May 16/03 1:30pm." See Exhibit no. 8.[6]

6. A hearing was held on May 16, 2003, in which Plaintiff-Appellant was advised of "her right to appeal" to the Plan, and the Honorable Court took "matter under advisement" and would "enter an order accordingly". See Exhibit no. 9 and 10.[7]

7. On July 1, 2003, Honorable Judge Jose A. Fuste filed an Order in which stated:

> "The pending request by Plaintiff to set aside the settlement and/or settlement related specific relief is denied . . .
>
> **The settlement agreement requires full exhaustion of Eli Lilly's Disability Plan procedures. Until this is accomplished, the court will not consider relieving any party from the terms of the settlement.**
>
> It is so ordered."

---

[5] For the content of these Exhibits 5, 6, and 7 refer to Appendix T and Appendix W.

[6] For the content of this Exhibit 8 refer to Appendix X.

[7] For the content of these Exhibits 9, and 10 refer to Appendix Y and Appendix Z.

In this Order, Honorable Judge Jose A. Fuste postponed the final decision regarding the breach of Agreement until the "full exhaustion" of the Plan procedures; binding then this Order to the Agreement and Plan process, in which the pending issues would be resolved by the Honorable Court after Plaintiff-Appellant completed her appeal under the Plan. See Exhibit no. 11.[8]

8. In compliance with the Court Order, Plaintiff-Appellant timely submitted an appeal under the Plan.

9. On a letter dated August 27, 2003, and after failing again to comply with the terms under the Agreement and the Plan, Defendants-Appellees denied again Plaintiffs-Appellants benefits and rights under the Agreement and the Plan.

10. On September 25, 2003 and pursuant to paragraph 9, 11, 12 and 17, pages 9, 10 and 11 of the Agreement, Plaintiffs-Appellants Attorneys timely filed a Request for Review and Petition for Oral Argument ("Request for Review"), in which the pending issues regarding Orders filed on August 14, 2002 and July 1, 2003, were requested to be resolved. See Exhibit no. 12.[9]

11. On October 27, 2003, Defendants-Appellees filed an Opposition to Request for Review and Petition for Oral Argument ("Opposition to Request for Review"). See Exhibit no. 13.[10]

12. On November 11, 2003, Honorable Judge Jose A. Fuste filed an Order, regarding the Request for Review, in

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[8] For the content of this Exhibit 11refer to Appendix D.

[9] For the content of this Exhibit 12 refer to Appendix AB.

[10] For the content of this Exhibit 13 refer to Appendix AC.

which only stated one word: **"Denied"**. See Exhibit no. 14.[11]

13. On December 8, 2003, Plaintiffs-Appellants Attorneys timely filed a Motion for Reconsideration Under Rule 59(e) and Very Respectfully Request to the Honorable Court to Give in Writing the Reasons Why the Court Denied Plaintiff's Request for Review ("Reconsideration and reasons for Denied"). See Exhibit no. 15.[12]

14. On December 19, 2003, Honorable Judge Jose A. Fuste filed an Order, regarding the Reconsideration, in which only stated: "**The reasons appear from the record and are summarized in docket 93.**" In this Order Honorable Judge Jose A. Fuste **only addressed one of the issues** for Request for Review: the reasons for the denial, in which referred Plaintiffs-Appellants to the record and to docket 93. In the referred docket, the only document filed is the Opposition to Request for Review filed by Defendants-Appellees. However, Honorable Judge Jose A. Fuste **did not rule** on the Reconsideration. See Exhibit no. 16.[13]

15. On January 7, 2004 and based on the fact that Honorable Judge Jose A. Fuste did not rule on the Reconsideration, Plaintiffs-Appellants attorneys timely filed a Motion Requesting Our Motion for Reconsideration to be Denied or Granted ("Reconsideration to be Denied or Granted"). See Exhibit no. 17.[14]

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[11] For the content of this Exhibit 14 refer to Appendix E.

[12] For the content of this Exhibit 15 refer to Appendix AD.

[13] For the content of this Exhibit 16 refer to Appendix F.

[14] For the content of this Exhibit 17 refer to Appendix AE.

16. On the same date, January 7, 2004, Plaintiffs-Appellants received a letter dated December 29, 2003, from their attorneys in which they informed their withdrawal as attorneys of record. See Exhibit No. 18.

17. On January 8, 2004, based on the fact that Plaintiffs-Appellants did not have an authorized attorney that could properly appeal their case in the Federal Court, Plaintiffs-Appellants (pro-se) timely filed a Motion to Inform to the Honorable Court the Withdrawal of Plaintiff Attorneys of Record, to Request Time to Hire Plaintiffs New Legal Representation and to Request the Extension of the Period of Time to File the Reconsideration and Appeal Processes for the Denial to Plaintiffs Request for Review ("Withdrawal of Attorneys, Request Time to Hire Legal Representation and to File the Reconsideration and Appeal"). See Exhibit no. 19.[15]

18. Since Plaintiffs-Appellants were informed of the attorneys' withdrawal, they unsuccessfully tried very hard to hire a new counsel in order to file an appeal for their case.

19. On February 25, 2004, Honirable Judge Jose A. Fuste filed two orders (see Exhibits 20 and 21)[16], in which stated:

> "Order re: [99] Motion requesting Order – The motion for reconsideration has been properly documented and denied."

---

[15] For the content of this Exhibit 19 refer to Appendix AF.

[16] For the content of these Exhibits 20 and 21 refer to Appendix G and Appendix H.

"Order finding as moot [100] Motion to withdraw as Attorney; finding as moot [100] Motion for extension of time; finding as moot [100] Motion for extension of time. This case is closed for all purposes."

III. CONCLUSION

The Honorable Court of Appeals has jurisdiction to consider Plaintiffs-Appellants Notice of Appeal as requested based on the following: 1) As per the Agreement and the Court Order filed on August 14, 2002, Plaintiffs-Appellants have the right to submit their case to the Honorable Court for review subject to reopening; 2) on September 25, 2003, Plaintiffs-Appellants Attorneys timely filed a motion for Request for Review, in which the pending issues regarding Orders and/or Judgement filed by the Honorable Court on August 14, 2002 and July 1, 2003, among others, were requested to be resolved; 3) on November 11, 2003, Honorable Court filed an Order in which denied Plaintiffs-Appellants motion for Request for Review; 4) on December 8, 2003, Plaintiffs-Appellants Attorneys timely filed a motion for Reconsideration under Rule 59(e); 5)on December 19, 2003, the Honorable Court filed an Order in which did not rule on the motion for Reconsideration; 6) on January 7, 2004, Plaintiffs-Appellants timely filed a motion Requesting Reconsideration to be Denied or Granted; 7) Plaintiffs-Appellants were informed extremely late of the attorneys decision to withdraw as attorneys of record, which left Plaintiffs-Appellants with an awfully short time to hire a new counsel; 8) On February 8, 2004, as soon as Plaintiffs-Appellants were informed of the attorneys' withdrawal,

immediately and timely filed a motion for Withdrawal of Attorneys, Request Time to Hire Legal Representation and to File the Reconsideration and Appeal; 9) Even thought Plaintiffs-Appellants efforts to hire a new counsel, it was impossible for them to hire one; 10) on February 25, 2004, the Honorable Court filed two Orders in which in the first finally, ruled on Plaintiffs-Appellants motion for Reconsideration, and in the second ruled on the Withdrawal of Attorneys, Request Time to Hire Legal Representation and to File the Reconsideration and Appeal; 11) Even when Plaintiffs-Appellants have no knowledge of the Federal legal processes, they had no other choice but to file an appeal, pro-se, which, as per Plaintiffs-Appellants better understanding, was timely filed on March 22, 2004.

In Federal Rules of Appellate Procedure under Rule 4(a)(4)(a) states:

> "If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, time to file an appeal runs for all parties from the entry of order of the last such remaining motion:
>
> (i) for judgment under rule 50(b);
>
> (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgement;
>
> (iii) for the attorney's fee under Rule 54 if the district court extends the time to appeal under Rule 58;
>
> (iv) to alter or amend the judgment under Rule 59;
>
> (v) for a new trial under Rule 59; or

(vi) for relief under rule 60 if the motion is filed no later that 10 days after the judgement is entered"

In addition under Rule 2 states:

"On its own or a party's motion, **a court of appeals may** - to expedite its decision or **for other good cause suspend any provision of these rules in a particular case and other proceedings** as it directs, except as other wise direct in Rule 26(b)."

Based on the above and as per Plaintiffs-Appellant better understanding, they have shown good causes of why the Honorable Court of Appeals has jurisdiction to consider the appeal. Plaintiffs-Appellants have appealed these orders and/or judgement under the best of their capacities and with the best intension trying not to waive any their right or responsibilities under any law. Plaintiffs-Appellants understand that due to their lack of legal knowledge there may be many limitations that can adversely affect their chances under this case. But, Plaintiffs-Appellants truly trust in **GOD** and in the **United State of America Justice**. It is that trust which leads them to continue and appeal this case seeking for Justice.

WHEREFORE, Plaintiffs-Appellants respectfully request to the Honorable Court of Appeals to grant the Notice of Appeal as requested.

RESPECTFULLY SUBMITTED.

CERTIFICATION: A copy of this motion is being sent by regular mail to: Carl Schuster, Usera & Aguilo, PO Box 363128, San Juan, PR 00936-3128.

In Naguabo, Puerto Rico, this 14th day of May of 2004.

/s/ Kenia M. Cintrón /s/ Miguel A. García Mendez
Kenia M. Cintrón Parrilla and Miguel A. García Mendez
PO Box 232
Naguabo, PR 00718-0232

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

SEALED

CASE NUMBER: 99 cv 1229 (JAF)

PLAINTIFF: KENIA M. CINTRON, et al.

DEFENDANT: ELI LILLY INDUSTRIES, et al.

DATE FILED: 8/14/02

THE DOCUMENT NUMBER LISTED BELOW IS LOCATED:

IN VAULT 8/14/02

DUPLICATE FILE

APPEALS SECTION

OTHER

DOCUMENT: 76

APPENDIX AK

UNITED STATES COURTS FOR THE FIRST CIRCUIT
OFFICE OF THE SETTLEMENT COUNSEL
JOHN JOSEPH MOAKLE
UNITED STATES COURTHOUSE
1 COURTHOUSE WAY - SUITE 3440
BOSTON, MA 02210
MAIN 617-748-9339 FAX 617-748-4393

HON. NEIL L. LYNCH
SETTLEMENT COUNSEL
617-748-9624

JANE CALAUTTI
EXECUTIVE ASSISTANT
617-748-4517

May 10, 2004

To: Jesus M. Hernandez Sanchez, Esq.
Kenia M. Cintron-Parrilla,Esq.
Miguel A. Garcia-Mendez, Esq.
Carl E. Schuster, Esq.
Lourdes C. Hernandez- Venegas, Esq.

Re: No. 04-1536 Cintron-Parrilla v. Lilly
Settlement Conference - Cancellation Notice

The settlement conference scheduled for Friday, May 14, 2004 at 11 :30 a.m. has been cancelled. No further action will be taken by this office. Thank you.

Sincerely,
/s/ Jane Calautti
Jane Calautti

APPENDIX AL

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

KENIA M. CINTRÓN PARRILLA;
MIGUEL A. GARCÍA MÉNDEZ;
Plaintiffs-Appellants

v. Appeal No. 04-1536

ELI LILLY INDUSTRIES, INC.,
ELI LILLY DEL CARIBE, INC.,
and/or LILLY DEL CARIBE, INC.,
ELI LILLY INDUSTRIES HEALTH,
WELFARE PLAN, and/or ELI LILLY
PUERTO RICO DISABILITY PLAN,
COMPANY X, COMPANY Y,
COMPANY A, COMPANY B,
COMPANY C; COMPANY D
Defendants-Appellees

NOTICE TO PLAINTIFFS

To: **Kenia M. Cintron Parrilla and**
Miguel A. Garcia Mendez
Plaintiffs-Appellants *(Pro se)*

Pursuant to the Notice of CAMP Settlement Conference, defendants-appellees Lilly Del Caribe, Inc., Eli Lilly Industries, Inc., and Eli Lilly Industries, Inc., Health, Welfare and Disability Plan (collectively referred to as "Lilly") hereby notify that its settlement representative

during the conference is Charles A. Grandy, Esq., Attorney, Human Resources, Eli Lilly and Company.

Legal counsel for Lilly will be Carl Schuster, Schuster Usera & Aguiló LLP, P.O. Box 363128, San Juan, Puerto Rico 00936-3128, Tel. (787) 765-4646, Fax (787) 765-4611, email: cschuster@suas.net.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 10th day of May, 2004.

WE HEREBY CERTIFY: That on this same date a true and exact copy of this document was sent, by certified mail, to Kenia M. Cintron Parrilla and Miguel A. Garcia Mendez, P.O. Box 232, Naguabo, Puerto Rico 00718-0232.

SCHUSTER USERA & AGUILO LLP
PO Box 363128
San Juan, Puerto Rico 00936-3128
Telephone: (787) 765-4646
Telefax: (787) 765-4611

CARL SCHUSTER
First Circuit Bar No. 46200

LOURDES C. HERNANDEZ-VENEGAS
First Circuit Bar No. 68323

By: /s/ Lourdes C. Hernandez –Venegas
Lourdes C. Hernandez –Venegas

APPENDIX AM

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 04-1536

KENIA M. CINTRÓN PARRILLA; MIGUEL A. GARCÍA MÉNDEZ;

Plaintiffs-Appellants

v.

ELI LILLY INDUSTRIES, INC.; ELI LILLY INDUSTRIES, INC. HEALTH, WELFARE AND DISABILITY PLAN; LILLY DEL CARIBE, INC.; COMPANY X; COMPANY Y

Defendants-Appellees

INFORMATIVE MOTION REGARDING SETTLEMENT CONFERENCE NOTICE

To the Honorable Court of Appeals:

COME NOW Plaintiffs-Appellants, pro-se, very respectfully state as follows:

1- On May 14, 2004, Plaintiffs-Appellants received from the Honorable Court of Appeals the Settlement Conference - Cancellation Notice, dated May 10, 2004 (see Exhibit 1).[1]

2- Plaintiffs-Appellants were surprised because they did not receive any notice for a settlement conference before.

[1] For the content of this Exhibit 1 refer to Appendix AK.

3- In addition, on May 14, 2004, Plaintiffs-Appellants received a Notice to Plaintiffs sent by Defendants-Appellees (see Exhibit 2)[2]. As stated before Plaintiffs-Appellants have not had knowledge regarding any settlement conference.

4- Plaintiffs-Appellants apologize for any incontinent this situation might be caused but, it was out of their control.

RESPECTFULLY SUBMITTED.

CERTIFICATION: A copy of this motion is being sent by regular mail to: Carl Schuster, Schuster, Usera & Aguilo, PO Box 363128, San Juan, PR 00936-3128 and, by certified mail number 7002 0860 0008 6608 7086, to Hon. Neil L. Lynch and Jane Calautti, Office of the Settlement Counsel, John Joseph Moakley United States Courthouse, One Courthouse Way-Suite 3440, Boston Massachusetts 02210.

In Naguabo, Puerto Rico, this 15th day of May of 2004.

/s/ Kenia M. Cintrón /s/ Miguel A. García Mendez

Kenia M. Cintrón Parrilla and Miguel A. García Mendez

PO Box 232

Naguabo, PR 00718-0232

[2] For the content of this Exhibit 2 refer to Appendix AL.

APPENDIX AN

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Case name **Kenia M. Cintrón Parrilla; Miguel A. García Méndez (Plaintiffs-Appellants) v. Eli Lilly Industries, Inc.; Eli Lilly Industries, Inc. Health, Welfare and Disability Plan; Lilly del Caribe, Inc.; Company X; Company Y (Defendants-Appellees)**

District Court Case No. **# 3: 99-cv-01229-JAF**

District of **Puerto Rico**

Date Notice of Appeal filed **March 22, 2004**

Court of Appeals Case No. **04-1536**

Form filed on behalf of **Kenia M. Cintrón Parrilla**

TRANSCRIPT REPORT

Transcript Not Necessary for this Appeal _____

Transcript Already Filed in District Court. List each transcript by docket entry number and date and type of proceeding (attach separate page if necessary _____

TRANSCIPT ORDER

Name of Court Reporter **Yvette Richardson**

Phone Number of Reporter **(787) 772-3476**

A. [x] **This constitutes an order of the transcript of the following proceedings [check appropriate box(es) and indicate dates of hearing(s)]: THIS IS A DUPLICATE. THE ORIGINAL**

TRANSCRIPT ORDER WAS FILED ON MARCH 22, 2004.

	PROCEEDING(S)	HEARING DATE(S)
☐	Jury Voir dire	_____
☐	Opening Statement (plaintiff)	_____
☐	Opening Statement (defendant)	_____
☐	Trial	_____
☐	Closing Argument (plaintiff)	_____
☐	Closing Argument (defendant)	_____
☐	Findings of Fact/Conclusions of Law	_____
☐	Jury Instructions	_____
☐	Change of Plea	_____
☐	Sentencing	_____
☐	Ball hearing	_____
☒	**Pretrial proceedings (specify) Hearing for Defendants' request to enforce an Agreement proposal, held on July 31, 2002**	
☐	Testimony (specify) _____	
☒	**Other (specify) Hearing for Plaintiffs' request to set aside the settled Agreement due to breach of Agreement by Defendants, held on May 16, 2003.**	

NOTE: Failure to specify in adequate detail those proceedings to be transcript may lead to the rejection of this form and the dismissal of the appeal.

B. [x] **I certify that I have contacted the court reporter and the following financial arrangements for payment of the transcript have been made:**

[x] **Private funds**.

[ ] Government expense (civil case). IFP has been granted and a motion for transcript at government expense has been allowed. (Attach a copy of the order to each copy of this order form.)

[ ] Criminal Justice Act. A CJA Form 24 has been approved by the district court judge.

[ ] Criminal Justice Act. A CJA Form 24 is attached for authorization by the court of appeals.

[ ] Federal Public Defender/Government Counsel - no CJA Form 24 necessary.

Filer's name **Kenia M. Cintrón Parrilla**

Filer's Signature **/s/ Kenia M. Cintrón**

Firm/Address **P. O. Box 232 Naguabo, Puerto Rico 00718**

Telephone number **(787) 874-0025**

Date mailed to court reporter **May 15, 2004**

(Court Reporter Use ONLY) Date received _____

Form CA1-10 (10/24/03) SEE INSTRUCTIONS ON REVERSE

APPENDIX AP

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 04-1536

KENIA M. CINTRON-PARRILLA; MIGUEL A. GARCIA-MENDEZ; CONJUGAL PARTNERSHIP GARCIA-CINTRON

Plaintiffs – Appellants

v.

ELI LILLY INDUSTRIES, INC.; ELI LILLY IND.USTRIES, INC. HEALTH, WELFARE AND DISABILITY PLAN; LILLY DEL CARIBE, INC.; COMPANY Xi COMPANY Y

Defendants – Appellees

NOTICE OF DEFAULT AND INTENT TO DISMISS

Issued: 5/11/04

Appellant is in default as to the following:

* Appearance Form
* Docketing Statement
* Transcript Report/Order Form

Within 14 days of the date of this notice, Appellant must file the above document(s). Failure to comply with this notice will lead to dismissal in accordance with Loc. R. 3(b).

By the Court:
Richard Cushing Donovan, Clerk
JULIE GREGG
Appeals Attorney

APPENDIX AR

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 04-1536

KENIA M. CINTRÓN PARRILLA;
MIGUEL A. GARCÍA MÉNDEZ;
- Plaintiffs-Appellants

v.

ELI LILLY INDUSTRIES, INC.; ELI LILLY INDUSTRIES, INC. HEALTH, WELFARE AND DISABILITY PLAN; LILLY DEL CARIBE, INC.; COMPANY X; COMPANY Y
Defendants-Appellees

MOTION IN COMPLIANCE WITH NOTICE OF DEFAULT AND INTENT TO DISMISS

To the Honorable Court of Appeals:

COME NOW Plaintiffs-Appellants, pro-se, very respectfully state as follows:

1- On May 14, 2004, Plaintiffs-Appellants received from the Honorable Court of Appeals Notice of Default and Intent to Dismiss, issue May 11, 2004 (see Exhibit 1).[1]

2- Plaintiffs-Appellants submitted a Transcript Order Form on March 22, 2004, but forgot to retained copy of such form.

[1] For the content of this Exhibit 1 refer to Appendix AP.

3- Also at the beginning of the month of April, Plaintiff-Appellant contacted the court reporter for follow-up.

4- In order to comply with the Honorable Court of Appeals request, on May 15, 2004, Plaintiffs-Appellants sent a certificate mail letter with a Transcript Order Form duplicate directly to the court reporter, Ms. Yvette Richardson, and very respectfully solicited from her a copy of the original form (see Exhibit 2).

5- In order to comply with the Notice of Default and Intent to Dismiss, Plaintiffs-Appellants respectfully file with this motion to the following documentation: Appearance Form and copy of the Transcript Report/Order Form[2] (see Exhibits 3 and 4[3]).

6- Due to the fact that Plaintiffs-Appellants are proceeding Pro se, the Docketing Statement is not being required to be filed (see Exhibit 5).

RESPECTFULLY SUBMITTED.

CERTIFICATION: A copy of this motion is being sent by regular mail to: Carl Schuster, Usera & Aguilo, PO Box 363128, San Juan, PR 00936-3128

In Naguabo, Puerto Rico, this 15h day of May of 2004.

/s/ Kenia M. Cintrón /s/ Miguel A. García Mendez

Kenia M. Cintrón Parrilla and Miguel A. García Mendez

PO Box 232

Naguabo, PR 00718-0232

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[2] This document is a duplicate; the original was filed on March 22, 2004 in the District Court for the District of Puerto Rico.

[3] For the content of this Exhibit 4 refer to Appendix AN.

Exhibit 2

Certified Mail Numbers: 7002 0860 0008 6608 7079
7002 0860 0008 6608 7062

May 15, 2004

To: Ms. Yvette Richardson
Court Reporter
U. S. District Court
District of Puerto Rico

From: Kenia M. Cintrón
P.O. Box 232
Naguabo, PR 00718-0232

Re: Case no. 3:99-01229-JAF/Transcript Order

Dear Ms. Richardson

We received a Notice of Default and Intent to Dismiss, issued on May 11, 2004, in which indicates that we are in default of the Transcript Report /Order Form, among others, (see attached copy). On March 22, 2004 Mrs. Cintrón filed a Transcript Order Form in the U.S. District Court for the District of Puerto Rico but, she forgot to keep a copy of such form.

In order to comply with the Court of Appeals' request now, Mrs. Cintrón is sending you a duplicate of the Transcript Order, (see attached copy). If you already have the Original Transcript, I will appreciate if you can send me a copy for our records and so we can also send a copy to the Court of Appeals.

We are pretty sure that you have done every under your control to accelerate the Transcript Report process, as per your telephone conversation with Mrs. Cintrón held at the

beginning of April. We also understand that you have a very heavy work load, as you explained to Mrs. Cintrón, as well. Very respectfully, we solicit your prompt action regarding this case.

If you have any doubt you can contact us at the phone number (787) 874-0025 or write us at the above address.

Sincerely,

/s/ Kenia M. Cintrón /s/ Miguel A. García Méndez

Kenia M. Cintrón Parrilla and Miguel A. García Méndez

Exhibit 3

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

APPEARANCE FORM

Case no. 04- 1536

Case Name (short): Cintrón-Parrilla v. Eli Lilly Industries

THE CLERK WILL ENTER THE APPEREANCE OF:
Kenia M. Cintrón Parrilla and Miguel A. García Méndez as the appellants **Pro se**.

/s/ Kenia M. Cintrón (Signature)

/s/ Miguel A. García Méndez (Signature)

Address:
P.O. Box 232
Naguabo, PR 00718-0232

Telephone: (787) 874-0025

Has this case or any related case previously been on appeal?
No

Exhibit 5

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT
(617) 748-9057

DOCKETING STATEMENT
INSTRUCTIONS

1- Counsel for an appellant must file the docketing statement with all attachments for every case appealed or cross appealed to the Court of Appeals. The docketing statement must be received by the Court of Appeals clerk's office within the fourteen days allowed to be deemed timely filed. Copies must be served on all parties to the action below and, in civil cases, on First Circuit Settlement Counsel.

2- The attorney filing the notice of appeal is responsible for filing the docketing statement, even if different counsel will handle the appeal. In the case of multiple appellants represented by separate counsel, the parties must confer and decide who will file the docketing statement. **Appellants proceeding pro se may file a docketing statement, but are not required to do so.**

3- The docketing statement is also used by First Circuit Settlement Counsel to facilitate pre-briefing review of civil cases in which all parties are represented by counsel, and in mediation conducted in such cases under First Circuit Local Rule 33. If counsel in a civil case believes a mediation conference would, be beneficial, counsel may make a confidential request for mediation by contacting the Office" of the Settlement Counsel directly at (617) 748-9624.

4- Counsel's failure to file the docketing statement within the time set forth will cause the Court to initiate the process for dismissal of the appeal under Local Rule 3.

5- IF AN OPPOSING PARTY CONCLUDES THAT THE DOCKETING STATEMENT IS IN ANY WAY INACCURATE, INCOMPLETE, OR MISLEADING, THE CLERK'S OFFICE MUST BE INFORMED IN WRITING OF ANY ERRORS AND ANY PROPOSED ADDITIONS OR CORRECTIONS WITHIN SEVEN DAYS OF SERVICE OF THE DOCKETING STATEMENT, WITH COPIES TO ALL OTHER PARTIES.

6- You must attach to this docketing statement:

- ADDITIONAL PAGES CONTAINING EXTENDED ANSWERS TO QUESTIONS ON THIS FORM.
- APPEARANCE FORMS FOR COUNSEL FOR EACH APPELLANT.
- A COPY OF THE TRANSCRIPT ORDER (see Docketing Statement, Question E).
- A CERTIFICATE OF SERVICE OF THIS DOCKETING STATEMENT ON ALL PARTIES TO THE ACTION BELOW AND, IN COUNSELED CIVIL CASES, ON FIRST CIRCUIT SETTLEMENT COUNSEL.

APPENDIX AS

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 04-1536

KENIA M. CINTRON-PARRILLA;
MIGUEL A. GARCIA-MENDEZ;
CONJUGAL PARTNERSHIP GARCIA-CINTRON
Plaintiffs – Appellants

v.

ELI LILLY INDUSTRIES, INC.; ELI LILLY INDUSTRIES, INC. HEALTH, WELFARE AND DISABILITY PLAN LILLY DEL CARIBE, INC.; COMPANY X, COMPANY Y
Defendants – Appellees

ORDER OF COURT
Entered: July 12, 2004

Upon consideration of request of Court Reporter Yvette Richardson,

It is ordered that the time for filing the transcripts of 7/31/02 Hearing for defendants request to enforce an agreement proposal, 5/16/03 Hearing for plaintiffs' request to set aside the settled agreement due to breach of agreement by defendants be enlarged to August 30, 2004.

By the Court:
Richard Cushing Donovan, Clerk
JULIE GREGG
Appeals Attorney

APPENDIX AT

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 04-1536

KENIA M. CINTRON-PARRILLA;
MIGUEL A. GARCIA-MENDEZ;
CONJUGAL PARTNERSHIP GARCIA-CINTRON
Plaintiffs – Appellants

v.

ELI LILLY INDUSTRIES, INC.; ELI LILLY INDUSTRIES, INC. HEALTH, WELFARE AND DISABILITY PLAN LILLY DEL CARIBE, INC.; COMPANY X, COMPANY Y
Defendants – Appellees

ORDER OF COURT

Entered: September 23, 2004

Upon consideration of Court Reporter Yvette Richardson's request,

It is ordered that the time to file the transcript of the hearings held on July 31, 2002 and May 16, 2003 is enlarged to and including September 30, 2004. The court notes that this transcript was ordered on May 17, 2004, and therefore, the court reporter has already had approximately four months to complete this transcript.

No further extension of this deadline should be expected.

By the Court:
Richard Cushing Donovan, Clerk
By: JULIE GREGG
Operations Manager.

APPENDIX AV

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 04-1536

KENIA M. CINTRÓN PARRILLA;
MIGUEL A. GARCÍA MÉNDEZ;
Plaintiffs-Appellants

v.

ELI LILLY INDUSTRIES, INC.; ELI LILLY DEL CARIBE, INC.; AND/OR LILLY DEL CARIBE, INC.; ELI LILLY INDUSTRIES HEALTH, WELFARE AND DISABILITY PLAN AND/OR ELI LILLY PUERTO RICO EXTENDED DISABILITY PLAN; COMPANY X; COMPANY Y; COMPANY A; COMPANY B; COMPANY C; COMPANY D
Defendants-Appellees

APPEAL FROM THE DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PETITION FOR REHEARING
PRO SE

KENIA M. CINTRÓN PARRILLA
MIGUEL A. GARCÍA MÉNDEZ
PO BOX 388
NAGUABO, PR 00718-0388

To the Honorable Court of Appeals:

COME NOW Plaintiffs-Appellants, pro-se, very respectfully pray, beg and implore as follows: That on October 1, 2004 the Honorable Court of Appeals Judges filed a JUDGMENT, (hereafter the "Court Of Appeal Judgment") in which state:

> "Having review Plaintiff's response and the record we dismiss the appeal as untimely with regards to the orders entered August 14, 2002, July1, 2003, November 24, 2003, and December 19, 2003 and affirmed orders entered on February 25, 2004, for which the appeal is timely."

In addition, the Honorable Court of Appeals Judges states:

> "The district Court entered two orders on February 25, 2004: (1) an order denying Plaintiffs' second motion for reconsideration; and 2) an order dismissing Plaintiffs' motion for an extension of time to file for Reconsideration and to appeal."

Then at the end of the Judgment the Honorable Court of Appeals Judges state:

> "The appeals is dismissed as to the orders entered August 14, 2002, July1, 2003, November 24, 2003, and December 19, 2003. The orders entered February 25, 2004 are affirmed. See Local Rule 27 (a)."

See Exhibit No. 1.[1]

Apparently, there is misunderstanding of the submitted motions and the respective filed orders corresponding to each motion as will be explained below.

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[1] For the content of this Exhibit 1 refer to Appendix A.

On August 14, 2002, the Honorable District Judge filed a Judgment (hereafter "August 2002 Judgment") regarding the Settlement Agreement stating:

> "The joint motion seeking voluntary dismissal is approved under the terms of the Sealed agreement. The case is close, **subject to reopening for the limited review purposes contemplated by the parties**."

This means that this August 2002 Judgment is not final and will be comprised by any further final decision, determination, order and/or judgment made by the Honorable District Court regarding this case since it leaves an open issue and allows it to be reopened. See, Motion In Compliance With Court Order, Exhibits Nos. 4 and 4A.[2]

On July 1, 2003, the Honorable District Judge filed an Order (hereafter "July 2003 Order"), regarding the Motion, Motion Imploring Urgent Help From The Honorable Court and Motion Requesting Urgent Hearing (hereafter collectively as "Motions Imploring Help and Hearing"), filed by Plaintiffs-Appellants, pro-se, on February 26, 2003, April 1, 2003 and April 25, 2003, respectively; to Motion Requesting Urgent Hearing And To Withdraw as Attorneys of Record (hereafter "First Request To Withdraw as Attorneys"), filed by Plaintiffs-Appellants' Attorneys on April 16, 2003; to Motion In Compliance With Court Order, filed by Defendants-Appellees on May 19, 2003; and the Hearing held on May 16, 2003 (hereafter "May 2003 Hearing").

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[2] For the content of these Exhibits 4 and 4A refer to Appendix C.

This Hearing was held due to the breaches of agreement incurred by the Defendants-Appellees and due to Plaintiffs-Appellants Attorney negligence to denounce them. On the same Plaintiff-Appellants were requesting the annulment of the Agreement due to the breaches of agreement, incurred by Defendants-Appellees, and the Honorable District Judge advised Plaintiff-Appellant of her right to appeal before the Lilly Plan and the Honorable District Court recognized Plaintiffs-Appellants petition to invalid and/or annul the Agreement. See, Motion In Compliance With Court Order, Exhibit Nos. 5, 6, 7, 8, 9 and10.[3]

On the July 2003 Order the Honorable District Judge States:

> "The settlement agreement requires full exhaustion of Eli Lilly's Disability Plan procedures. **Until this is accomplished, the court will not consider relieving any party from the terms of the settlement**."

This July 2003 Order is nether final since it also leaves the open issues to be determined by the court after the full exhaustion of the disability plan procedures is accomplished. See, Motion In Compliance With Court Order, Exhibit No. 11[4].

This means that both, August 2002 Judgment and July 1, 2003 Order, still opened and will be comprised by any further final decision, determination, order and/or judgment. In addition, in the July 2003 Order, the Honorable District

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[3] For the content of these Exhibits 5, 6, 7, 8, 9 and 10 refer to Appendix T, Appendix W, Appendix X, Appendix Y and Appendix Z

[4] For the content of this Exhibit 11 refer to Appendix D.

Judge also denied Plaintiffs-Appellants Attorneys' First Request To Withdraw as Attorneys.

On November 24, 2003, the Honorable District Judge filed an Order (hereafter "November 2003 Order") regarding the motions for Request For Review And Oral Argument (hereafter "Request For Review"), filed on September 25, 2003 and for Opposition To Request For Review And Petition For Oral Argument (hereafter "Opposition To Request For Review"), filed on October 27, 2003, stating only the word: "**Denied**". See, Motion In Compliance With Court Order, Exhibit Nos. 12, 13 and 14.[5] This November 2003 Order which comprised the August 2002 Judgment and July 2003 Order was filed without giving any further explanation and/or opinion.

On December 8, 2004, within the required 10 day period, Plaintiffs-Appellants' Attorneys timely filed a Motion For Reconsideration Under Rule 59(e) And Very Respectfully Request To The Honorable Court To Give In Writing The Reasons Why The Court Denied Plaintiff's Request For Review, (hereafter as "First Reconsideration") in which the August 2002 Judgment, July 2003 Order and November 2003 Order still comprised. See, Motion In Compliance With Court Order, Exhibit No. 15.[6]

On December 19, 2003, the Honorable District Judge filed an Order (hereafter December 2003 Order), regarding the First Reconsideration, stating only: "**The reasons appear from the record and are summarized in docket 93**".

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[5] For the content of these Exhibits 12, 13 and 14 refer to Appendix AB, Appendix AC and Appendix E.

[6] For the content of this Exhibit 15 refer to Appendix AD.

According to the information given to Plaintiffs-Appellants by their Attorneys, the Honorable District Judge did not rule and/or make a Judgment on the First Reconsideration; instead only gave the reasons for the denial for the Request for Review. In addition, although in the December 19 Order document there is a section for a judgment which states four (4) options: GRANTED, DENIED, NOTED, MOOT, the Honorable District Judge did not select or mark any of them to indicate or give a judgment, which confirmed to Plaintiffs-Appellants that their Attorneys understanding was correct and that the Honorable District Court did not rule. Therefore no judgment was made for the December 2003 Order, thus still opened pending for a judgment. See, Motion In Compliance With Court Order, Exhibit 16.[7]

For such reason, on January 7, 2004, within the require 10 day period, Plaintiffs-Appellants' Attorneys timely filed a Motion Requesting Our Motion For Reconsideration To Be Denied Or Granted under rule 59(e), (hereafter "First Reconsideration To Be Denied or Granted") in which August 2002 Judgment, July 2003 Order, November 2003 Order and December 2003 Order still comprised. See, Motion In Compliance With Court Order, Exhibit No. 17.[8] There is no second motion for reconsideration filed.

Based on the facts that Plaintiffs-Appellants were notified for the first time, on that same day January 7, 2004, of: 1) the First Reconsideration To Be Denied or Granted, 2) the December 2003 Order, 3) the Attorneys withdrawal, and 4) about the reasons for the denial; and before the event

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[7] For the content of this Exhibit 16 refer to Appendix F.

[8] For the content of this Exhibit 17 refer to Appendix AE.

that Plaintiffs-Appellant had neither had any previous experience on the Federal Courts, had no attorneys, and the Reconsideration and Appeal processes became confused and unknown to them, the next day, January 8, 2004, Plaintiffs-Appellants timely filed a Motion To Inform To The Honorable Court the Withdrawal of Plaintiffs Attorneys of Record, To Request Time To Hire Plaintiffs New Legal Representation And To Request The Extension Of Period Of Time To File A Reconsideration And Appeal Processes For the Denial To Plaintiffs Request For Review (hereafter "Request Of Extension To File A Second Reconsideration And To Appeal"). See, Motion In Compliance With Court Order, Exhibit Nos. 18 and 19.[9]

This motion was filed in order for the Plaintiffs-Appellants to: 1) have the opportunity to hire a new legal representation, 2) to carefully read and understand the decisions and implications of the orders filed by the Honorable District Judge, 3) to find out the required procedures, legal document and processes, 4) have time to evaluate the record, and 5) adequate filed second reconsideration and/or an appeal; based on the fact that such denial refers to the record, and that the Honorable District Judge have granted Defendants-Appellees to violate the Plaintiffs-Appellants' civil rights under the Agreement, the Plan, US Civil Code, the US Constitution and the Puerto Rico Civil Code as will be explained later below.

Plaintiffs-Appellants understand that this extension was extremely necessary.

As explained above, both motions, the First Reconsideration To Be Denied or Granted and the Request

[9] For the content of these Exhibits 19 and 20 refer to Appendix AF.

Of Extension To File A Second Reconsideration And To Appeal comprise the December 2003 Order as well as the August 2002 Judgment, July 2003 Order and the November 2003 Order.

On February 25, 2004, the Honorable District Judge, filed two Orders (hereafter collectively as "February 2004 Orders") in which rule on both motions, the first one regarding the First Reconsideration and First Reconsideration To Be Denied or Granted, stating: "**The motion for reconsideration has been properly documented and denied**." and the second regarding the Request Of Extension To File A Second Reconsideration And To Appeal stating:

> "ORDER finding as moot [100] to Withdraw as Attorney; finding as moot [100] Motion for extension of time, finding as moot [100] Motion for extension of time. **This case is closed for all purposes**."

See, Motion In Compliance With Court Order, Exhibit No. 20 and 21.[10]

On March 22, 2004 and within the 30 day period, Plaintiffs-Appellants timely filed a Notice of Appeal for both February 2004 Orders, which comprise the December 2003 Order, November 2003 Order July 2003 Order and August 2002 Judgment, according to Rule 4(a)(1)(4) and 4(a)(4). It was Plaintiffs-Appellants understanding that they could to wait until the final decision of such motions to appeal the case according to Rule 4(a)(1)(A) and 4(a)(4) and which states:

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[10] For the content of these Exhibits 21 abd 22 refer to Appendix G and Appendix H.

"In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)4, and 4(c), the notice of appeal required by rule c3 must be filed within 30 days of the judgment or order appealed from is entered."

"**If any party timely files in the district court any of the following motions under the Federal Rules of Civil Procedures, the time to file an appeal runs for all parties from the entry of the order disposing the last such remaining motion**:

(i) for a judgment under Rule 50 (b)

(ii) to amend or make additional factual findings under rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under rule 54 if the district court extend the time to appeal under rule 58;

(iv) to alter or amend the judgment under rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered."

Therefore it is Plaintiffs-Appellants understanding that the First Reconsideration To Denied Or Granted request is the remaining motion under rule 59 and thus, comply with Rule 4(a)4(iv). Which means that, the March 2004 Notice of Appeal was timely file as to the February 2004 Orders as well as the December 2003 Order which comprises the August 2002 Judgment , July 2003 Order, November 2003 Order.

In any event, even if the First Reconsideration To Denied Or Granted could not be considered in compliance of Rule 4(a)4(iv) then, it should be considered in

compliance with Rule 4(a)4(vi) Based on the fact the lack of ruling could be was a clerical mistake, under Rule 60(a); or a Honorable District Court mistake, inadvertence or excusable neglect, under Rule 60(b), of not rule or filed a judgment; or in the worst of the cases a Plaintiffs-Appellants misunderstanding of the Rules and/or Legal Procedures.

Nevertheless, it is Plaintiffs-Appellants better understanding that they have made what they understood was correct to and within the time period it was required to be done, and it was never their intention to act or be negligent and/or to become this case to be dormant. For the contrary, Plaintiffs-Appellants have always complied with all the requirements and timely filed all the documentation they have been asked to within in the required timeframe.

On Court Of Appeal Judgment, the Honorable Court of Appeal Judges state that the Honorable District Court did not abuse its discretion in:

> "...denying Plaintiff second motion for reconsideration. See White v. Fair, 289 F3.d 1, 11 (1st Cir. 2002) (second motion for reconsideration review for abuse of discretion). The district court assayed Plaintiffs' argument on their motion for judicial review. Declining to revisit the same issues a second time does not rise to the level of abuse of discretion."

The White v. Fair does not apply to this case since: 1) There was no second reconsideration file or under appeal; 2) in White v. Fair the Appellant filed the request for reconsideration seven (7) years after the judgment was filed; 3) in our case the was no judgment for the First

Reconsideration and the request for the judgment was timely filed within the 10 day period.

Plaintiffs-Appellants respectfully differ from the Honorable Appeal Court Judges when states:

> "There is no evidence that the court "switched the basic issues" when ruling on the motion for judicial review, such that Plaintiff were left without sufficient notice or opportunity to respond. Compare Douglas v. York 360 F.3d 286, 290 (1st Cir. 2004) (finding an abuse of discretion where the district court injected a new issue into the case without giving notice and an opportunity to respond."

There was a "switched the basic issues" when the Honorable District Judge stated on the December 19 Order: "The reasons appear from the record and are summarized in docket 93". As part of the record there is evidence that Defendants-Appellees violated Plaintiffs- Appellants civil rights under the Agreement, the Plan, the Federal Civil Code, the US Constitution and the Puerto Rico Civil Code when denied Plaintiff-Appellant Disability Claim because she exercised her right to choose or not to choose under the US Constitution.

Defendants-Appellees capricious, arbitrary, in abuse of discretion, in violation of Plaintiffs-Appellants rights changed and breach the terms and conditions under the Agreement, signed by the parties, when did not followed the Disability Claim Procedures, exercise coercion forcing Plaintiff-Appellant to choose for options not contemplated under the Plan and the Settlement Agreement, denied Plaintiff Disability because she refused to sign and

Amendment to the Settlement Agreement that contains incorrect information, among others.

The better evidence for this is when in a July 3, 2003 letter, Defendants-Appellees requested Plaintiff-Appellant to "choose any of the physicians listed ...for each discipline or have the physician selected for you". See, Request For Review, Exhibit No. 13.[11]

In response to this request, in a July 16, 2003 letter, Plaintiffs-Appellants informed to Defendants-Appellees about the discrepancies between their requests and the Plan and the Agreement, signed by the parties. Plaintiff-Appellant also indicates that she is not required to choose or agree on physicians to perform medical evaluations under the Plan and the Agreement, signed by the parties. Nevertheless, Plaintiff-Appellant chose to "undergo to medical evaluations as per required and stated under section 6.02(b) of the Plan" and thus informed the decision to Deffendants-Appellees. See, Request For Review, Exhibit No. 14.[12] But, no response was received from the Defendants-Appellees.

By a telephone call held on August 22, 2003, five (5) days before the timeline to render a decision, Defendants-Appellees requested a second extension of time not contemplated of the Plan and the Agreement due their failure to timely set the medical evaluations under the Plan.

The same day and August 22, 2003 by a fax letter, Plaintiff-Appellant responded again that she chose "undergo to medical evaluation only as stated under section

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[11] For the content of this Exhibit 13 refer to Appendix AB.

[12] For the content of this Exhibit 14 refer to Appendix AB.

6.02(b) of the Plan and signed by the parties in the Settlement Agreement". See, Request For Review, Exhibit No. 15.[13]

On August 25, 2003 letter, Defendants-Appellees threaten, restrict, coerce Plaintiffs-Appellants' rights conditioning the Disability Claim determination to Plaintiff-Appellant signature of an Amended Agreement with incorrect information. See, Request For Review, Exhibit No. 16.[14]

On August 25, 2003 letter Plaintiff-Appellant chose not to sign the Amended Agreement because it contains incorrect information and because she can not be threaten, blame or frame for the Defendants-Appellees faults. In addition, Plaintiff-Appellant stated that she "has never refused to undergo to medical evaluations as stated in section 6.02(b) of the Plan and signed by the parties in the Agreement" and that she "still willing to undergo to medical evaluations as stated on section 6.02(b) and 6.05(b) of the Plan and signed by the parties in the Agreement".

On August 27, 2003 letter, Defendants-Appellees denied Plaintiff-Appellant Disability Claim because she did not choose and agree to sign an Amended Agreement with incorrect information for an extra extension of time out of the Plan and the Settlement Agreement, signed by the parties.

By denying Plaintiffs-Appellants' Request For Review and the subsequent Reconsideration granting the Opposition For Review, the Honorable District Court granted that

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[13] For the content of this Exhibit 15 refer to Appendix AB.

[14] For the content of this Exhibit 16 refer to Appendix AB.

Plaintiff-Appellant was obligated to choose physicians to undergo to medical examinations and was also obligated to sign an Amended Agreement. By this means then, Honorable District Court is granting that after a Settlement Agreement is signed, the party that have more control of and/or disposition over the events can unilaterally change and impose other conditions and term under the Agreement at its own convenience adversely affecting the other party. Plaintiffs-Appellants understand that this is a "switch if basic issue".

There is more evidence in the record that shows the outraged Disability Claim process that Defendants-Appellees had been followed. The May 16, 2003 hearing transcript should contain more evidence of the Defendants-Appellees violation to Plaintiffs-Appellants rights and to the breach of the Settlement Agreement.

Plaintiffs-Appellants also respectfully defer from the Honorable Appeal Court Judges when states:

> "Nor did the district court abuse its discretion in dismissing the motion for an extension of time to file for reconsideration to appeal. See Mirpuri v. Act Manufacturing, Inc., 212 F.3d 624, 627 (1st Cir. 2000) (motions to extend time for filling an appeal reviewed for abused of discretion; Gochis. Allstate Ins. Co., 16 F3.d 12, 14 (1st Cir. 1994) (same)"

Even though, Plaintiffs-Appellant have above demonstrated that all the Orders and Judgments are comprised together and therefore could be joined in the Notice of Appeal, they have also herein showed "good cause" for the time of filing the Notice of Appeal.

Even more important is the fact that the Honorable Appeal Court Judges conclude that:

> "In any event, even if we were to review the substance of this appeal, it is extremely doubtful that Plaintiffs would prevail. Because it could not verify Cintrón-Parrilla's disability claim on the medical information she had submitted, Defendant's Employee Benefits Committee (the "Benefits Committee") requested, as permitted by the settlement agreement, and extended disability benefit plan that Cintrón-Parrilla see an independent neurologist and psychiatrist for medical evaluation. Cintrón-Parrilla initially agreed to the evaluations but ultimately failed to attend any appointments. Under such circumstances, the Benefits Committee's decision to deny the claim cannot be said to have been arbitrary or capricious. Donaho v. FMC Corp., 74 F.3d 894, 899 (1st[15] Cir.1996) (If the committee's decision offers a reasonable explanation, their decision should not be disturbed even if another reasonable explanation, but different, interpretation may be made."); see also Pari-Fasano v. ITT Hartford Life Insurance Accident Co., 230 F.3d 415, 419 (1st Cir. 2000); Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 184 (1st Cir. 1998)."

As explained above, Defendants-Appellees never complied with the Agreement and the Plan. The reason of why Cintrón-Parrilla did not undergo to medical evaluation

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[15] There is a mistake on the number of the circuit it should read (8th Cir.)

as per the Plan and the Agreement was because Defendants-Appellees did not set the appointments with the physicians for such evaluation according to the Disability Plan procedures and timelines as explained above. On the quoted cases there are contradictory medical reports in which some physicians stated that the appellants were disabled and other that stated that they were not disabled. This is not our case. Defendants-Appellees did not submit any objective contradictory evidence by any physician that stated that Plaintiff-Appellant is not disabled or that can be concluded that she is not disabled. In Donaho v. FMC Corp. also states:

> "However, where the administrative decision lacks support in the record, or where the evidence in support of the decision does not ring true and is so overwhelmed by the contrary evidence, the administrative decision is unreasonable and will not stand"

If Defendants-Appellees failed to follow the procedure and to arrange the physician appointments, according to the Plan and the Agreement, for Plaintiff-Appellant to undergo to medical examination is not Plaintiff-Appellant's fault and could no be used against her. Plaintiff-Appellant submitted robust evidence that support her condition. See, Request For Review, Exhibit No. 2, docket no. 90

In the Black and Decker Disability Plan v. Nord, 123 S.Ct.1965 (2003) states:

> "Plan administrators **may not arbitrarily refuse to credit a claimant's reliable evidence, including the opinions of treating physician.**"

> "ERISA and the Secretary of Labor regulations under the Act require "**full and fair**" assessment of claims **and clear communication to the claimant** of the "specific reasons" for benefit denials."

Moreover, Plaintiff-Appellant submitted her Disability Claim retroactively to be effective on May 19,1998, pursuant to the Agreement, page 7, paragraph 4, but Deffendants-Appellees refused to evaluated it with the medical information submitted as agreed, and conditioned it to an independent medical evaluation to be performed years after the condition was commenced.

WHEREFORE, and for the above exposed, Plaintiffs-Appellants, very respectfully beg, pray and implore as follows:

1- To vacate, reverse and/or remand the Judgment of dismissed for the appeals of Judgment and Orders entered August 14, 2002, July1, 2003, November 24, 2003, and December 19, 2003,

2- To vacate, reverse and/or remand the Judgment of affirmed to the orders entered on February 25, 2004,

3- To grant us an the opportunity to file, be heard, have a fair appeal process for all the above mentioned Orders and any other legal process or procedure that may apply,

4- Any other relief that this Honorable Court of Appeal deem proper.

RESPECTFULLY SUBMITTED.

CERTIFICATION: A copy of this motion is being sent by certified mail to: Carl Schuster, Usera & Aguilo, PO Box 363128, San Juan, PR 00936-3128.

In Naguabo, Puerto Rico, this 13th day of October of 2004.

/s/ Kenia M. Cintrón /s/ Miguel A.García Méndez
Kenia M. Cintrón Parrilla and Miguel A. García Méndez
PO Box 388
Naguabo, PR 00718-0388

EXHIBIT AW

CMF/WCF LIVE – U.S. District Court for the District of Puerto Rico – Docket Report

United States District Court

District of Puerto Rico (San Juan)

CIVIL DOCKET FOR CASE #: 3:99-cv-01229-JAF

Cintron-Parrilla, et al v. Eli Lilly Industries, et al

Assigned to: Chief Judge Jose A Fuste

Demand: $0

Cause: 29:1132 E.R.I.S.A.-Employee Benefits

Date Filed: 03/05/1999

Jury Demand: None

Nature of Suit: 791 Labor: E.R.I.S.A.

Jurisdiction: Federal Question

Plaintiff

Kenia M. Cintron-Parrilla represented by

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Conjugal Partnership Garcia-Cintron **Jesus M. Hernandez-Sanchez**
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v.

Defendant
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LEAD ATTORNEY
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Lilly del Caribe, Inc. represented by
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ATTORNEY TO BE NOTICED

Lizette C. Velez-Rive
(See above for address)
TERMINATED: 11/24i2003
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

A-Z **Company**

A-Z Company

All Defendants

Eli Lilly Puerto Rico

Date Filed	#	Docket Text
03/05/1999	1	COMPLAINT Filing Fee $ 150.00 Receipt # 99575 (ct) (Entered: 03/16/1999)
03/05/1999		SUMMONS issued for Eli Lilly Industries, Health Welfare Plan, Lilly del Caribe (ct) (Entered: 03/16/1999)
03/24/1999	2	MOTION by Eli Lilly Industries to

		Extend Time until 4/28/99 to answer complaint, and ** Added for Eli Lilly Industries attorney Carl E. Schuster (su) (Entered: 03/26/1999)
04/27/1999	3	MOTION by Eli Lilly Industries to Extend Time until 5/17/99 to file dispositive motion (su) (Entered: 04/29/1999)
05/07/1999	4	MOTION by Kenia M. Cintron-Parrilla to Correct caption of original complaint (ov) (Entered: 05/10/1999)
05/13/1999		ENDORSED ORDER mooting [2-1] motion to Extend Time until 4/28/99 to answer complaint, [2-2] motion ** Added for Eli Lilly Industries attorney Carl E. Schuster Noted. (signed by Judge Jose A. Fuste) (il) (Entered: 05/14/1999)
05/13/1999		ENDORSED ORDER granting [4-1] motion to Correct caption of original complaint (signed by Judge Jose A. Fuste) (il) (Entered: 05/14/1999)
05/13/1999		ENDORSED ORDER granting [3-1] motion to Extend Time until 5/17/99 to file dispositive motion, set Motion Filing deadline to 5/17/99 (signed by Judge Jose A.Fuste) (il) (Entered: 05/14/1999)

05/17/1999	5	MOTION with Memorandum in Support by Eli Lilly Industries, Lilly del Caribe for Summary Judgment w/statement in support thereof. (il) (Entered: 05/21/1999)
05/28/1999	6	MOTION by Kenia M. Cintron-Parrilla to Extend Time for 30 days to opp deft's mot for sum/jgm (su) Modified on 07/02/1999 (Entered: 06/01/1999)
06/24/1999	7	MOTION by Eli Lilly Industries waiving service of summons and req to extend time until 8/30/99 to file dispositive motion (su) (Entered: 06/25/1999)
06/30/1999	8	RESPONSE by Kenia M. Cintron-PatTilla in opposition to [5-1] motion for Summary Judgment by Lilly del Caribe, Eli Lilly Industries (su) (Entered: 07/01/1999)
07/07/1999	9	MOTION by Eli Lilly Industries, Lilly del Caribe for Leave to File REPLY to plffs opp to mot for sum/jgm , and to Extend Time until 7/27/99 to file reply (su) (Entered: 07/08/1999)
07/22/1999		ENDORSED ORDER granting [6-1] motion to Extend Time for 30 days to opp deft's mot for sum/jgm,

		Response to Motion reset to 8/23/99 for [5-1] motion for Summary Judgment (signed by Judge Jose A. Fuste) (il) (Entered: 07/23/1999)
07/22/1999		ENDORSED ORDER granting [7-1] motion waiving service of summons and req to extend time until 8/30/99 to file dispositive motion, set Motion Filing deadline to 8/30/99 (signed by Judge Jose A. Fuste) (il) (Entered: 07/23/1999)
07/22/1999		ENDORSED ORDER granting [9-1] motion for Leave to File REPLY to plffs opp to mot for sum/jgm, granting [9-2] motion to Extend Time until 7/27/99 to file reply (signed by Judge Jose A. Fuste) (il) (Entered: 07/23/1999)
07/27/1999	10	REPLY by Eli Lilly Industries, Lilly del Caribe to response to [5-1] motion for Summary Judgment by Lilly del Caribe, Eli Lilly Industries (np) (Entered: 07/28/1999)
08/10/1999	11	MOTION with Memorandum in Support by Eli Lilly Industries for Summary Judgment. Response due 8/23/99. (su) (Entered: 08/11/1999)

08/25/1999		SUR-REPLY to dfts reply to pltfs opposition to motion for summary judgment tendered, by Kenia M. Cintron-Parrilla (ct) (Entered: 08/26/1999)
08/26/1999	12	MOTION by Kenia M. Cintron-Parrilla to Extend Time until 9/23/99 to opp mot for sum/jgm (su) (Entered: 08/27/1999)
09/28/1999	13	MOTION by Kenia M. Cintron-Parrilla to Extend Time up to 10/9/99 to answer deft's motion for summary judgment (mr) (Entered: 09/30/1999)
10/14/1999	14	RESPONSE w/memo in support by Kenia M. Cintron-Parrilla in opposition to [11-1] motion for Summary Judgment by Eli Lilly Industries (su) (Entered: 10/15/1999)
10/14/1999	15	MOTION by Kenia M. Cintron-Parrilla to Extend Time for 30 days to file certified English translation (su) (Entered: 10/15/1999)
10/22/1999	16	MOTION by Eli Lilly Industries for Leave to File REPLY to plffs opp to sum/jgm , and to Extend Time for 30 days to file REPLY (su) (Entered: 10/22/1999)
11/15/1999		Reply to opp. to summary

		judgment tendered, by Eli Lilly Industries (ni) (Entered: 11/18/1999)
02/04/2000	17	MOTION SUBMITTING Amended Complaint w/attachment by Kenia M.. Cintron-Parrilla (su) (Entered: 02/07/2000)
02/04/2000	18	AMENDED COMPLAINT by Kenia M. Cintron-Parrilla (Answer due 2/14/00 for Lilly del Caribe, for Eli Lilly Industries) amending [1-1] complaint against Eli Lilly Puerto Ric (su) (Entered: 02/07/2000)
02/11/2000	19	RESPONSE by Eli Lilly Industries, Lilly del Caribe in opposition to [18-1] amended complaint by Kenia M. Cintron-Parrilla, [17-1] miscellaneous by Kenia M. Cintron-Parrilla (su) (Entered: 02/14/2000)
03/31/2000		ENDORSED ORDER mooting [13-1] motion to Extend Time up to 10/9/99 to answer deft's motion for summary judgment (signed by Judge Jose A. Fuste) (su) (Entered: 03/31/2000)
03/31/2000		ENDORSED ORDER mooting [12-1] motion to Extend Time until 9/23/99 to opp mot for sum/jgm

		(signed by Judge Jose A. Fuste) (su) (Entered: 03/31/2000)
03/31/2000		ENDORSED ORDER mooting [15-1] motion to Extend Time for 30 days to file certified English translation (signed by Judge Jose A. Fuste) (su) (Entered: 03/31/2000)
03/31/2000	20	OPINION AND ORDER granting [5-1] motion for Summary Judgment [8-1] opposition response Noted. [10-1] response reply Noted. granting [11-1] motion for Summary Judgment [14-1] opposition response Noted. denying [17-1] miscellaneous (signed by Judge Jose A. Fuste) (su) (Entered: 04/07/2000)
03/31/2000	21	JUDGMENT dismissing complaint (signed by Judge Jose A. Fuste) (su) (Entered: 04/07/2000)
03/31/2000		Case closed (su) (Entered: 04/07/2000)
04/20/2000	22	MOTION by Kenia M. Cintron-Parrilla, Miguel A. Garcia-Mendez, C/P Garcia-Cintron to Set Aside Judgment: [21-1] judgment order, and/or for Reconsideration of [21-1] judgment order Response

		due 5/3/00. (su) (Entered: 04/24/2000)
06/05/2000	23	MOTION SUBMITTING Certified Translation of Exhibit "B" of plffs motion for sum/jgm w/attachment by Kenia M. Cintron-Parrilla (su) (Entered: 06/07/2000)
12/21/2000	24	OPINION AND ORDER granting [22-1] motion to Set Aside Judgment: [21-1] judgment order, granting [22-2] motion for Reconsideration of [21-1] judgment order. Granting in part, denying in part [11-1] motion for Summary Judgment and granting in part, denying in part [5-1] motion for Summary Judgment. Granted as to pltt's claim for punitive damages and denied as to pltt's other claims. (signed by Judge Jose A. Fuste) (ct) (Entered: 12/21/2000)
12/21/2000		Case reopened (ct) (Entered: 12/21/2000)
12/21/2000	25	PT ORDER setting Answer deadline to 12/29/00 for Eli Lilly Puerto Ric, for Company Y, for Company X, for Lilly del Caribe, Eli Lilly Industries, Discovery deadline to 2/15/01, setting Pretrial

		Conference for 1:30 3/19/01 before Judge Jose A. Fuste, setting Pretrial Order deadline to 3/15/01 (signed by Judge Jose A. Fuste (ct) (Entered: 12/21/2000)
12/21/2000	26	MOTION by Eli Lilly Industries, Lilly del Caribe, Eli Lilly Puerto Ric to Extend Time until 1/18/01 to answer the amended complaint and until 4/2/01 to conclude discovery (ct) (Entered: 12/22/2000
01/08/2001	27	ORDER granting [26-1] motion to Extend Time until 1/18/01 to answer the amended complaint and until 4/2/01 to conclude discovery, resetting Answer deadline to 1/18/01 for Eli Lilly Puerto Ric, for Lilly del Caribe, for Eli Lilly Industries, resetting Discovery deadline to 4/2/01 and resetting Pretrial Conference for 12:00 5/11/01 before Judge Jose A. Fuste (signed by Judge Jose A. Fuste) (ct) (Entered: 01108/2001)
01/18/2001	28	ANSWER by Eli Lilly Industries, Lilly del Caribe (Attorney Lizette C. Velez. Rive) to amended complaint (ct) (Entered: 01/19/2001)

01/26/2001	29	MOTION by Eli Lilly Industries, Lilly del Caribe, Eli Lilly Puerto Ric to Strke jury demand (ct) (Entered: 02/13/2001)
02/12/2001	30	RESPONSE by Kenia M. Cintron-P.arrilla in opposition to [29-1] motion to Strike jury demand by Eli Lilly Puerto Ric, Lilly del Caribe, Eli..Lilly Industries (ct) (Entered: 02/13/2001)
02/20/2001	31	MOTION by Eli Lilly Industries, Lilly del Caribe, Eli Lilly Puerto Ric for Leave to File reply to opposition to motion to strike jury trial, and to Extend Time until 3/2/1 to file same (ct) (Entered: 02/21/2001)
02/21/2001		Reply to opposition to motion to strike jury demand tendered, by Eli Lilly Industries, Lilly del Caribe, Eli Lilly Puerto Ric (ct) (Entered: 02/22/2001)
03/01/2001	32	MOTION by Kenia M. Cintron-Parrilla, Miguel A. Garcia-Mendez, C/P Garcia-Cintron to Extend Time until 3/27/01 to answer interrogatories and produce documents (ft) (Entered: 03/02/2001)
03/30/2001	33	JOINT MOTION by all parties to

		Extend Time for 90 days to conclude discovery and to Continue PTC set for 11/01 (ct) (Entered: 04/03/2001)
04/04/2001	34	ORDER denying [32-1] motion to Extend Time until 3/27/01 to answer interrogatories and produce documents (signed by Judge José A. Fuste) (ct) (Entered: 04/04/2001)
04/04/2001	35	ORDER granting [31-1] motion for Leave to File reply to opposition to motion to strike jury trial, granting [31-2] motion to Extend Time until 3/2/1 to file same (signed by Judge Jose A. Fuste) (ct) (Entered: 04/04/2001)
04/04/2001	36	REPLY by Eli Lilly Industries, Lilly del Caribe, Eli Lilly Puerto Ric to response to [29-1] motion to Strike jury demand by Eli Lilly Puerto Ric, Lilly del Caribe, Eli Lilly Industries (ct) (Entered: 04/04/2001)
05/07/2001	37	ORDER granting [33-1] joint motion to Extend Time for 90 days to conclude discovery, granting [33-2] joint motion to Continue PTC set for 5/11/01 and resetting Pretrial Conference for 1:308/9/01

		before Judge Jose A. Fuste (signed by Judge Jose A. Fuste) (ct) (Entered: 05/07/2001)
05/07/2001	38	OPINION AND ORDER granting [29-1] motion to Strike jury demand (signed by Judge Jose A. Fuste) (ct) (Entered: 05/07/2001)
07/03/2001	39	MOTION by All Plaintiffs for Leave to File 2nd amended complaint w/tendered amended complaint (ct) (Entered: 07/05/2001)
08/01/2001	40	MOTION by Kenia M. Cintron-Parrilla to Continue PTC set for 8/9/01 (ct) (Entered: 08/02/2001)
08/02/2001	41	ORDER granting [39-1] motion for Leave to File 2nd amended complaint (signed by Judge Jose A. Fuste) (ct) (Entered: 08/02/2001)
08/02/2001	42	AMENDED COMPLAINT by Kenia M. Cintron-Parrilla, Miguel A. Garcia-Mendez, C/P Garcia-Cintron (Answer due 8/13/01 for Eli Lilly Puerto Ric, for Lilly del Caribe, for Eli Lilly Industries) amending [18-1] amended complaint by Kenia M. Cintron-Parrilla (ct) (Entered: 08/02/2001)
08/02/2001	43	ORDER resetting Pretrial Conference for 1:30 8/17/01 before

		Judge Jose A. Fuste (signed by Judge Jose A. Fuste) (ct) (Entered: 08/02/2001)
08/06/2001	44	ANSWER by Eli Lilly Industries, Lilly del Caribe (Attorney Carl Schuster) to amended complaint (ct) (Entered: 08/07/2001)
08/13/2001	45	MOTION by Kenia M. Cintron-Parrilla to Continue PTC set for 8/17/01 (ct) (Entered: 08/15/2001)
O8/15/2001	46	ORDER granting [45-1] motion to Continue PTC set for 8/17/01, granting [40-1] motion to Continue PTC set for 8/9/01 and resetting Pretrial Conference for 1:30 9/26/01 before Judge Jose A. Fuste (signed by Judge Jose A. Fuste) (ct) (Entered: 08/15/2001)
09/25/2001	47	Proposed pre-trial order received from Kenia M. Cintron-Parrilla, Eli Lilly Industries, Lilly del Caribe, Eli Lilly Puerto Ric, Miguel A. Garcia-Mendez, C/P Garcia-Cintron (ct) (Entered: 09/26/2001)
09/26/2001		Pretrial Conference held before Judge Jose A. Fuste (ct) (Entered: 11/29/2001)
09/28/2001		ENDORSED ORDER approving [47-1] pre-trial order (signed by Judge Jose A. Fuste) (ja) (Entered:

		09/28/2001)
11/21/2001	48	MOTION by Kenia M. Cintron-Parrilla, Miguel A. Garcia-Mendez, C/P Garcia-Cintron to Continue BT set for 12/3/01 (ct) (Entered: 11/26/2001)
11/29/2001	49	ORDER granting [48-1] motion to Continue BT set for 12/3/01 and resetting Bench Trial for 9:30 3/11/02 before Judge Jose A. Fuste (signed by Judge Jose A. Fuste) (ct) (Entered: 11/29/2001)
11/29/2001	50	ORDER PTC held on 9/26/01. Approving [47-1] pre-trial order. Bench Trial set for 12/3/01. (signed by Judge Jose A. Fuste) (ct) (Entered: 11/29/2001)
12/04/2001	51	MOTION by All Defendants to Continue BT set for 3/11/02 (ct) (Entered: 12/05/2001)
12/14/2001	52	Minute entry: setting Settlement Conference for 9:00 12/19/01 before Judge Robert J. Ward (Clerk) (ct) (Entered: 12/21/2001)
12/19/2001		Settlement Conference held before Judge Robert J. Ward (ct) (Entered: 12/26/2001)
12/19/2001	53	Minute entry: Settlement Conference held. Settlement appears to be premature at this

		time. Parties will report to Judge Ward. Set Advise Court of Settlement deadline to 1/18/02 Court Reporter: N/A (Judge Robert J. Ward) (ct) (Entered: 12/26/2001)
01/15/2002	54	MOTION by All Defendants to Withdraw [51-1] motion to Continue BT set for 3/11/02 by All Defendants (ct) (Entered: 01/16/2002)
02/04/2002	55	ORDER mooting [51-1] motion to Continue BT set for 3/11/02 (signed by Judge Jose A. Fuste) (ct) (Entered: 02/04/2002)
02/04/2002	56	ORDER granting and mooting [54-1] motion to Withdraw [51-1] motion to Continue BT set for 3/11/02 by All Defendants (signed by Judge Jose A. Fuste) (ct) (Entered: 02/04/2002)
02/27/2002	57	ORDER resetting Bench Trial for 8:30 3/25/02 before Judge D. Hornby (Clerk) (ct) (Entered: 03/01/2002)
02/28/2002	58	MOTION by All Defendants to Continue BT set for 3/25/02 (ct) (Entered: 03/01/2002)
03/07/2002	59	MOTION by All Plaintiffs to Continue NJT set for 3/25/02 (ct) (Entered: 03/07/2002)

05/07/2002	60	ORDER [59-1] motion to Continue NJT set for 3/25/02 Noted. (signed by Judge Jose A. Fuste) (ct) (Entered: 05/07/2002)
05/07/2002	61	ORDER granting [58-1] motion to Continue BT set for 3/25/02 and resetting Jury Trial for 9:30 7/29/02 before Judge Jose A. Fuste. If a visiting judge is available to preside over the case, the same may be tried in short notice anytime before 7/28/02. (signed by Judge Jose A. Fuste) (ct) (Entered: 05/07/2002)
05/08/2002	62	NOTICE OF SETTLEMENT filed by Eli Lilly Industries, Lilly del Caribe, Eli Lilly Puerto Ric (ct) (Entered: 05/09/2002)
06/03/2002	63	NOTICE OF SETTLEMENT filed by Kenia M. Cintron-Parrilla, Miguel A. Garcia-Mendez, C/P Garcia-Cintron (ct) (Entered: 06/04/2002)
06/07/2002	64	ORDER [63-1] settlement notice Noted. Cnsl are reminded that [61-1] order remains in full force and effect until settlement papers are filed. (signed by Judge Jose A. Fuste) (ct) (Entered: 06/07/2002)
07/03/2002	65	MOTION by All Defendants to

		request reinforcement of settlement agreement (ct) (Entered: 07/08/2002)
07/03/2002	66	MOTION by All Defendants to set aside JT set for 7/29/02 (ct) (Entered: 07/08/2002)
07/09/2002	67	RESPONSE by Kenia M. Cintron-Parrilla in opposition to [65-1] motion to request reinforcement of settlement agreement by Eli Lilly Puerto Ric, Lilly del Caribe, Eli Lilly Industries (ct) (Entered: 07/10/2002)
08/01/2002	68	ORDER: Parties are granted until 8/14/02 to file signed settlement agreement, set Notice of Compliance deadline to 8/14/02, otherwise case will be trial starting on 8/15/02, set Jury Trial for 9:30 8/15/02 before Judge Jose A. Fuste, etc. as stated herein (signed by Judge Jose A. Fuste) (yr) (Entered: 08/01/2002)
08/06/2002	69	MOTION with Memorandum in Support by All Defendants in Limine re: facts occurred prior 12/7/98 (ct) (Entered: 08/08/2002)
08/08/2002	70	MOTION with Memorandum in Support by All Defendants in Limine re: docs. containing

		inadmissable hearsay (ct) (Entered: 08/12/2002)
08/08/2002	71	MOTION with Memorandum in Support by All Defendants in Limine re: evidence as to Garcia's damages claims (ct) (Entered: 08/12/2002)
08/12/2002	72	MOTION with Memorandum in Support by All Defendants in Limine re: evidence as to retaliation claim under ERISA (ct) (Entered: 08/13/2002)
08/12/2002	73	MOTION with Memorandum in Support by All Defendants in Limine re: evidence as to pltfs treatment (ct) (Entered: 08/13/2002)
08/13/2002	74	MOTION by All Defendants to Amend [47-1] pre-trial order (ct) (Entered: 08/13/2002)
08/14/2002	75	JOINT MOTION by Kenia M. Cintron-Parrilla, Eli Lilly Industries, Lilly del Caribe, Eli Lilly Puerto Ric, Miguel A. Garcia-Mendez for partial dismissal w/prejudice and submitting agreement under seal (ja) (Entered: 08/14/2002)
08/14/2002	76	SEALED DOCUMENT (ja) (Entered: 08/14/2002)

08/14/2002		ENDORSED ORDER approving [76-1] document(s) (signed by Judge Jose A. Fuste) (ct) (Entered: 08/14/2002)
08/14/2002	77	JUDGMENT approving the Joint Motion seeking voluntary dismissal under the terms of the Sealed Agreement. This case is closed, subject to reopening for the limited review purposes contemplated by the parties (signed by Judge Jose A. Fuste) (ct) (Entered: 08/14/2002)
08/14/2002		Case closed (ja) (Entered: 08/14/2002)
01/08/2003	78	Letter gent by Kenia M. Cintron-Parrilla, Miguel A. Garcia-Mendez to Attys Hernandez & Macari re: dfts' non-compliance w/settlement agreement. (ct) (Entered: 01/08/2003)
01/08/2003		ENDORSED ORDER [78-1] informative motion. This letter should be filed. (signed by Judge Jose A. Fuste) (ct) (Entered: 01/08/2003)
01/13/2003	79	Informative Motion by Kenia M. Cintron-Parrilla, Miguel A. Garcia-Mendez, C/P Garcia-Cintron, pro se re: settlement agreement

		annulment. (ct) (Entered: 01/13/2003)
02/26/2003	80	MOTION by All Plaintiffs to request the Ct's intervention re: breach of settlement agreement (ct) (Entered: 02/28/2003)
04/01/2003	81	MOTION by All Plaintiffs, pro se to request the Ct's intervention re: breach of settlement agreement (ct) (Entered: 04/02/2003)
04/16/2003	82	MOTION by All Plaintiffs' attys for Special Hearing and for Jesus Hernandez and Guillermo Macari to Withdraw as Attorneys (ct) (Entered: 04/17/2003)
04/25/2003	83	URGENT MOTION by All Plaintiffs, pro se for Hearing re: compliance w/settlement agreement (ct) (Entered: 04/28/2003)
05/02/2003	84	ORDER granting [83-1] motion for Hearing re: compliance w/settlement agreement, granting [82-1] motion for Special Hearing Motion Hearing set for 1 :30 5/16/03 for [82-2] motion for Jesus Hernandez and Guillermo Macari to Withdraw as Attorneys, set for 1 :30 5/16/03 for [81-1] motion to request the Ct's intervention re:

		breach of settlement agreement, set for 1 :30 5/16/03 for [80-1] motion to request the Ct's intervention re: breach of settlement agreement (signed by Judge Jose A. Fuste) (ct) (Entered: 05/02/2003)
05/16/2003		Motion hearing held re: [83-1] motion for Hearing re: compliance w/settlement agreement by Miguel A. Garcia-Mendez, Kenia M. Cintron-Parrilla, [82-1] motion for Special Hearing by C/P Garcia-Cintron, Miguel A. Garcia-Mendez, Kenia M. Cintron-Parrilla (ct) (Entered: 07/01/2003)
05/19/2003	85	Informative Motion in compliance w/order by All Defendants re: chronology of events. (ct) (Entered: 05/20/2003)
05/27/2003	86	MOTION SUBMITTING by Attys Hernandez & Macari copy of letter sent to pltfs re: reinforcement of settlement agreement w/attachment as to Kenia M. Cintron-Parrilla, Miguel A. Garcia- Mendez, C/P Garcia-Cintron (ct) (Entered: 05/30/2003)
07/01/2003	87	Minute entry: Motion Hrg held on 5/16/03. (Judge Jose A. Fuste) (ct) (Entered: 07/01/2003)

07/01/2003	88	ORDER denying pltfs' request to set aside settlement agreement and/or for settlement related specific releif. Terminating [82-2] motion for Jesus Hernandez and Guillermo Macari to Withdraw as Attorneys, terminating [81-1] motion to request the Ct's intervention re: breach of settlement agreement, terminating [80-1] motion to request the Ct's intervention re: breach of settlement agreement (signed by Judge Jose A. Fuste) (ct) (Entered: 07/01/2003)
07/23/2003	89	Minute entry: Hearing re: settlement agreement held on 5/16/03. Pltf submits her folders containing her personal statements, ect. which are attced to the case file. After hearing the parties, the Ct will take matter under advisement. Court Reporter: Richardson (Judge Jose Fuste) (ct) Modified on 07/23/2003 (Entered: 07/23/2003)
09/25/2003	90	MOTION by All Plaintiffs to review the Appeals Committee's decision and for oral argument w/attchs. (ct) (Entered: 09/26/2003)

10/07/2003	91	MOTION by All Defendants for Leave to File opposition to motion for review and to Extend Time until 10/27/03 to file same (ct) (Entered: 10/08/2003)
10/27/2003	92	ORDER granting [91-1] motion for Leave to File opposition to motion for review, granting [91-2] motion to Extend Time until 10/27/03 to file same Response to Motion reset to 10/27/03 for [90-1] motion to review the Appeals Committee's decision, [90-2] motion for oral argument (signed by Judge Jose A. Fuste) (ct) (Entered: 10/27/2003)
10/27/2003	93	RESPONSE by All Defendants in opposition to [90-1] motion to review the Appeals Committee's decision by C/P Garcia-Cintron, Miguel A. Garcia-Mendez, Kenia M. Cintron-Parrilla, [90-2] motion for oral argument by C/P Garcia-Cintron, Miguel A. Garcia-Mendez, Kenia M. Cintron-Parrilla (ct) (Entered: 10/28/2003)
11/04/2003	94	MOTION by All Defendants for Lizette Velez Rive to Withdraw as Attorney (ct) (Entered: 11/10/2003)
11/24/2003	95	ORDER denying [90-1] motion to

		review the Appeals Committee's decision, denying [90-2] motion for oral argument (signed by Judge Jose A. Fuste) (ct) (Entered: 11/24/2003)
11/24/2003	96	ORDER granting [94-1] motion for Lizette Velez Rive to Withdraw as Attorney (signed by Judge Jose A. Fuste) (ct) (Entered: 11/24/2003)
12/08/2003	97	MOTION by All Plaintiffs for Reconsideration of [95-1] order and to establish in writing the reasons for the denial of motion for review (ct) (Entered: 12/09/2003)
12/19/2003	98	ORDER terminating [97-1] motion for Reconsideration of [95-1] order, terminating [97-2] motion to establish in writing the reasons for the denial of motion for review. The reasons appear from the record and are summarized in dkt #93. (signed by Judge Jose A. Fuste) (ct) (Entered: 12/19/2003)
01/07/2004	99	MOTION by All Plaintiffs for ruling upon motion for reconsideration (ct) (Entered: 01/08/2004)
01/08/2004	100	MOTION by All Plaintiffs, pro se for Guillermo Macari to Withdraw as Attorney, to Extend Time to

		obtain new cnsl. and to Extend Time to file a reconsideration and appeal (ct) (Entered: 01/12/2004)
02/25/2004	101	ORDER re: [99] Motion requesting Order - The motion for reconsideration has been properly documented and denied. Signed by Judge Jose A Fuste on 2/25/04. (mrj,) (Entered: 02/25/2004)
02/25/2004	102	ORDER finding as moot [100] Motion to Withdraw as Attorney; finding as moot [100] Motion for extension of time, finding as moot [100] Motion for extension of time. This case is closed for all purposes. Signed by Judge Jose A Fuste on 2/25/04. (mrj,) (Entered: 02/25/2004)
03/22/2004	103	NOTICE OF APPEAL as to 77 Judgment, 88 Order,, 95 Order, 98 Order,, [101] Order on Motion requesting Order, [102] Order on Motion to Withdraw as Attorney,, Order on Motion for extension of time, by Kenia M. Cintron-Parrilla, Conjugal Partnership Garcia-Cintron, Miguel A. Garcia-Mendez, pro se. Appeal Record due by 4/1/2004. (ct,) (Entered: 03/23/2004)

03/23/2004		Filing Fee Received $ 255.00, receipt number 144561 re:dkt.103 (ne,) (Entered: 03/23/2004)
04/20/2004	104	Certified and Transmitted Record on Appeal to US Court of Appeals re 103 Notice of Appeal, (ct,) (Entered: 04/21/2004)
05/04/2004	105	USCA Case Number 04-1536 for 103 Notice of Appeal, filed by Miguel A. Garcia-Mendez, Conjugal Partnership Garcia-Cintron, Kenia M. Cintron-Parrilla. (ni,) (Entered: 05/04/2004)
07/08/2004	106	Supplemental Record on Appeal transmitted to US Court of Appeals Re 103 Notice of Appeal, filed by Miguel A. Garcia-Mendez, Conjugal Partnership Garcia-Cintron, Kenia M. Cintron-Parrilla (Dkt. 76/sealed) (xi,) (Entered: 07/08/2004)

APPENDIX AX

General Docket

First Circuit Court of Appeals

04-1536 04-1536

Court of Appeals Docket #: 04-1536 Filed: 4/22/04
Nsuit: 3791 Labor: E.R.I.S.A.
Cintron-Parrilla, et al v. Lilly, et al
Appeal from: U.S District Court of PR

Lower court information:
District: 0104-3 : 99-01229 lead: 99-01229
Ordering Judge: Jose Antonio Fuste, Judge
trial judge: Robert J. Ward, District Judge
court reporter: Yvette Richardson, Court Reporter
Date Filed: 3/5/99
Date order/judgment: 2/25/04
Date NOA filed: 3/22/04

District: 0104-3 : 99-01229 lead: 99-01229
Date Filed: 3/5/99
Date order/judgment: 12/19/03
Date NOA filed: 3/22/04

District: 0104-3 : 99-01229 lead: 99-01229
Date Filed: 3/5/99
Date order/judgment: 11/24/03
Date NOA filed: 3/22/04

District: 0104-3 : 02-01229 lead: 02-01229
Date Filed: 3/5/99
Date order/judgment: 7/1/03
Date NOA filed: 3/22/04

District: 0104-3 : 99-01229 lead: 99-01229
Date Filed: 3/5/99
Date order/judgment: 8/14/02
Date NOA filed: 3/22/04

Fee status: paid

Prior cases:
None
Current cases:
None

Kenia M. Cintron-Parrilla Plaintiff - Appellant	Jesus M. Hernandez Sanchez FTS 787.725.1112 787.722.5814 Suite 407 [NTC ret] 1519 Ponce de Leon Ave. San Juan, PR 00909-1791 Kenia M. Cintron-Parrilla 787-874-1359 [COR LD NTC pro] P.O. Box 388 Naguabo, PR 00718
Miguel A. Garcia-Mendez Plaintiff - Appellant	Jesus M. Hernandez Sanchez (See above) [NTC ret] Miguel A. Garcia-Mendez 787-874-1359 [COR LD NTC pro]

	P.O. Box 388 Naguabo, PR 00718
Conjugal Partnership AVILES-TORRES, GARCIA-CINTRON Plaintiff - Appellant v.	Jesus M. Hernandez Sanchez (See above) [NTC ret]
Eli Lilly, Industries, Inc. Defendant – Appellee	Lourdes C. Hernandez Venegas 787-765-4646 [COR LD NTC ret] Schuster Usera & Aguilo P.O. Box 363128 San Juan, PR 00936-3128 Carl E. Schuster FTS 787-765-4611 787-765-4646 [NTC ret] Schuster Usera & Aguilo LLP P.O. Box 363128 San Juan, PR 00936-2138
Lilly Del Caribe, Inc. Defendant – Appellee	Lourdes C. Hernandez-Venegas (See above) [COR LD NTC ret] Carl E. Schuster (See above) [COR LD NTC ret]

Eli Lilly, Industries, Inc.	Carl Scuster
Health, Welfare and	(see above)
Disability Plan	[NTC ret]
Defendant – Appellee	
Company X	
Defendant – Appellee	
Company Y	Carl Scuster
Defendant – Appellee	(see above)
	[NTC ret]

Kenia M. Cintron-Parrilla; Miguel A. Garcia-Mendez
Partnership Garcia-Cintron
Plaintiffs – Appellants

v.

Eli Lilly, Industries, Inc.; Eli Lilly, Industries, Inc. Health, Welfare and Disability Plan; Lilly Del Caribe, Inc.; Company X; Company Y
Defendants - Appellees

4/22/04	CIVIL CASE docketed. Opening forms sent. Notice of Appeal filed by Appellant Kenia M. Cintron-Parrilla, Appellant Miguel A. Garcia-Mendez, Appellant Conjugal Partnership. Appearance form due 5/6/04. Docketing Statement due 5/6/04. Transcript Report/Order due 5/6/04. [04-1536] (bety)
4/22/04	RECORD filed: 4 volume (s) consisting of docket entries, VOLUME I 1-19, VOLUME 11 20-60, VOLUME III 61-88, VOLUME IV 89-103. NO Transcript (s) filed. [860269-1] [04-1536] (bety)

4/22/04 Involvement of attorney Lizette C. Velez-Rive for Lilly Caribe, attorney Lizette C. Velez-Rive for Eli Lilly terminated. [04-1536J (bety)

4/30/04 APPEARANCE filed by Carl E. Schuster for Appellee Lilly del Caribe, Appellee Eli Lilly. [863385-1] [04-1536] (bety)

4/30/04 ATTORNEY Lourdes C. Hernandez-Venegas for Appellee Lilly del Caribe, Appellee Eli Lilly added to case. [04-1536] (bety)

4/30/04 APPEARANCE filed by Lourdes C. Hernandez-Venegas for Appellee Lilly del Caribe, Appellee Eli Lilly. [863392-1] [04-1536] (bety)

5/5/04 Order to Show Cause entered. Upon review of the record in this case, it appears that this Court may not have jurisdiction to consider the appeal. The notice of appeal, filed on March 22, 2004 in District Court No. 99-01229-JAF (D. P.R.), indicates that plaintiff-appellants are challenging a series of orders entered on February 25, 2004, December 19, 2003, November 24, 2003, July 1, 2003 and August 14, 2002. To the extent that plaintiffs-appellants seek to appeal from the December 19, 2003, November 24, 2003, July I, 2003 and August 14, 2002 orders, the appeal is untimely. Fed. R. App. P. 4(a) (notice of appeal in a civil case must be filed within thirty days of judgment or order appealed from). Accordingly, it is hereby ordered that plaintiffs-appellants show cause, in writing, by May 19, 2004, why this court has jurisdiction to consider their appeal from the December 19, 2003, November

24, 2003, July 1, 2003 and August 14, 2002 orders. The failure to take action by May 19, 2004 may lead to dismissal of that portion of the appeal for lack of diligent prosecution. Loc. R. 3(b). Show Cause Response due 5/19/04. [04-1536] (bety)

05/11/04 Notice of Default and Intent to Dismiss Issued. Appellant must file the Appearance Form on or before 5/25/04, Docketing Statement on or before 5/25/04, Transcript Report/Order Form on or before 5/25/04, or this case will be dismissed for lack of prosecution in accordance with Loc. R. 3 (b). [867064-3] [04-1536] (bety)

5/17/04 Transcript Report/Order Form filed by Appellant Kenia M. Cintron-Parrilla, Appellant Miguel A. Garcia-Mendez, Appellant Conjugal Partnership. Transcript of 7/31/02 Hearing for defendants request to enforce an agreement proposal, 5/16/03 Hearing for plaintiffs' request to set aside the settled agreement due to breach of agreement by defendants ordered from Court Reporter Yvette Richardson. Transcript due 7/16/04 (bety)

5/17/04 APPEARANCE filed by Miguel A. Garcia-Mendez for Appellant Miguel A. Garcia-Mendez, Kenia M. Cintron-Parrilla for Appellant Kenia M. Cintron-Parrilla. [868891-1] [04-1536] (bety)

5/17/04 PUBLIC NOTE: Motion in compliance with notice of default and intent to dismiss filed by appellants. [04-1536] (bety)

5/17/04 DOCKETING STATEMENT filed by Appellant Kenia M. Cintron-Parrilla, Appellant Miguel A. Garcia-Mendez, Appellant Conjugal Partnership. [04-1536] (bety)

517/04 PUBLIC NOTE: Informative motion regarding settlement conference filed by appellants. [04-1536] (bety)

5/17/04 RESPONSE to show cause filed by appellants. (motion in compliance with court order) [869043--1] [04-1536] (bety)

5/8/04 PUBLIC NOTE: Motion to inform change of postal address and telephone number. [04-1536] (bety)

7/12/04 FAXED Motion filed by court reporter Yvette Richardson to extend time to file transcript of 7/31/02 Hearing for defendants request to enforce and agreement proposal, 5/16/03 Hearing for plaintiffs' request to set aside the settled agreement due to breach of agreement to 8/30/04 [04-1536] (bety)

7/12/04 ORDER entered. Upon consideration of request of Court Reporter Yvette Richardson, it is ordered that the time for filing the transcripts of 7/31/02 Hearing for defendants request to enforce an agreement proposal, 5/16/03 Hearing for plaintiffs' request to set aside the settled agreement due to breach of agreement by defendants be enlarged to August 30, 2004. Transcript now due 8/30/04. (04-1536] (bety)

7/13/04 SUPPLEMENTAL RECORD consisting of docket entry 76 (sealed) filed. [887249-1] [860269-1] [04-1536] (bety)

9/21/04 Court Reporter Transcript Notice issued. Transcript of 7/31/02 hearing for defendants request to enforce an agreement proposal, 5/16/03 hearing for plaintiffs' request to set aside the settled agreement due to breach of agreement by defendants due 10/5/04 for Yvette Richardson. (bety)

9/22/04 Motion filed by court reporter Yvette Richardson to extend time to file transcript of 7/31/02 hearing for defendants request to enforce an agreement proposal, 5/16/03 hearing for plaintiffs' request to set aside the settled agreement due to breach of agreement by defendants to 9/30/04. [04-1536] (lina)

9/23/04 ORDER entered. Upon consideration of Court Reporter Yvette Richardson's request, It is ordered that the time to file the transcript of the hearings held on July 31, 2002 and May 16, 2003 is enlarged to and including September 30, 2004. The court notes that this transcript was ordered on May 17, 2004, and therefore, the court reporter has already had approximately four months to complete this transcript. No further extension of this deadline should be expected. [04-1536] (lina)

10/1/04 JUDGMENT entered by Senior Judge Levin H. Campbell/ Judge Juan R. Torruella/ Judge Bruce M. Selya. Plaintiffs/ Kenia M. Cintron-Parrilla

(ôCintron-parrillaö) and Miguel A. Garcia-Mendez, filed a notice of appeal on March 22, 2004, purporting to challenge the orders entered by the District of Puerto Rico on August 14, 2002, July 1, 2003, November 24, 2003, December 19, 2003, and February 25, 2004. We ordered Plaintiffs to show cause why the appeal should not be dismissed as untimely regarding all but the February 25, 2004 orders. Having reviewed PlaintiffsÆ response and the record, we dismiss the appeal as untimely with regard to the orders entered August 14, 2002, July 1, 2003, November 24, 2003 and December 19, 2003 and affirm the orders entered February 25, 2004, for which the appeal is timely. The district court entered two orders on February 25, 2004: (1) an order denying PlaintiffsÆ second motion for reconsideration; and (2) an order dismissing PlaintiffsÆ motion for an extension of time to file for reconsideration and to appeal. It did not abuse its discretion in denying PlaintiffsÆ second motion for reconsideration. See White v. Fair, 289 F.3d I, 11 (1st Cir. 2002) (second motions for reconsideration reviewed for abuse of discretion). The district court assayed PlaintiffsÆ arguments on their motion for judicial review. Declining to revisit the same issues a second time does not rise to the level of an abuse of discretion. There is no evidence that the court ôswitched the basic issueö when ruling on the motion for judicial review, such that Plaintiffs were left without sufficient notice or

opportunity to respond. Compare Douglas v. York County, 360 F.3d 286, 290 (1st Cir. 2004) (finding an abuse of discretion where the district court ôinjected a new issue into the case without giving notice and an opportunity to respondö). Nor did the district court abuse its discretion in dismissing the motion for an extension of time to file for reconsideration and to appeal. See Mirpuri v. Act Manufacturing, Inc., 212 F.3d 624, 627 (1st Cir. 2000) (motions to extend time for filing an appeal reviewed for abuse of discretion); Gochis v. Allstate Ins. Co., 16 F.3d 12/ 14 (1st Cir. 1994) (same). Plaintiffs argued in their motion for an extension of time that they did not receive docket entry no. 93, which the district court indicated set out the reasons for dismissal and without which, Plaintiffs allege, they could not know the basis of their appeal, until January 7, 2004. Nonetheless, at that point, Plaintiffs still had until January 20 to file a timely notice of appeal, which they failed to do. That Plaintiffs were hoping to secure new counsel does not excuse this failure. In any event, even if we were to review the substance of this appeal, it is extremely doubtful that Plaintiffs would prevail. Because it could not verify Cintron-ParrillaÆs disability claim on the medical information she had submitted, DefendantsÆ Employee Benefits Committee (the ôBenefits Committeeö) requested, as permitted by the settlement agreement and extended disability benefit plan, that Cintron-

Parrilla see an independent neurologist and psychiatrist for medical evaluation. Cintron-Parrilla initially agreed to the evaluations but ultimately failed to attend any appointments. Under such circumstances, the Benefits CommitteeÆs decision to deny the claim cannot be said to have been, arbitrary or capricious. Donaho v. FMC Corp., 74 F.3d 894, 899 (1st Cir. 1996) (ôIf the committeeÆs decision offers a reasonable explanation, their decision should not be disturbed even if another reasonable, but different, interpretation may be made.ö); see also Pari-Fasano v. ITT Hartford Life and Accident Ins. Co., 230 F.3d 415, 419 (1st Cir. 2000); Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 184 (1st Cir. 1998). The appeal is dismissed as to the orders entered August 14, 2002, July 1, 2003, November 24, 2003, and December 19, 2003. The orders entered February 25, 2004 are affirmed. See Local R. 27(a). [914609-1] [04-1536] (bety)

10/6/04 PUBLIC NOTE: Request for extension of time to file transcript filed by Court Reporter Yvette Richardson. Case was dismissed on 10/1/04. [04-1536] (bety)

10/14/04 PRO SE PETITION filed by Appellant Kenia M. Cintron-parrillaJ Appellant Miguel A. Garcia-Mendez Appellant Conjugal Partnership for panel rehearing. [919178-1] Certificate of Service dated 10/13/04. [04-1536] (bety)

11/9/04	ORDER entered by Judge Juan R. Torruella, Senior Judge Levin H. Campbell, Judge Bruce M. Selya. The petition for rehearing is denied. [04-1536] (bety)
11/16/04	MANDATE ISSUED. [04-1536] (bety)

(3)

MAY 13 2005

No. 04-1367

In the Supreme Court of the United States

KENIA M. CINTRÓN PADILLA, ET VIR,
Petitioners,

v.

ELI LILLY INDUSTRIES, INC., ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Should an appellate Court review the merits of a district court judgment or order if the time period to file an appeal has elapsed?

II. Does an ERISA plan administrator act arbitrarily or capriciously when it denies a claim for long-term disability benefits if a claimant fails to provide sufficient information to demonstrate a claimed disability and refuses to complete an independent medical evaluation required by the plan?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Respondents Lilly Del Caribe, Inc., Eli Lilly Industries, Inc., and Eli Lilly Industries, Inc., Health, Welfare and Disability Plan ("Respondents" or "Lilly") state as follows:

1. All interested parties to this proceeding are identified in the caption.

2. Lilly del Caribe, Inc. and Eli Lilly Industries, Inc. are wholly-owned subsidiaries of Eli Lilly and Company, their parent company. The Eli Lilly Industries, Inc. Health, Welfare and Disability Plan, is sponsored by Eli Lilly Industries.

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STATEMENT OF THE CASE

On March 5, 1999, Petitioners filed a Complaint before the United States District Court for the District of Puerto Rico, pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.* Petitioner Kenia Cintrón ("Cintrón") alleged that she was entitled to Short-Term Disability ("STD") and Long-Term Disability ("LTD") benefits under Respondents' Extended Disability and Employee Welfare Plans (collectively, the "LTD Plan" or "Plan").[1]

On August 14, 2002, the parties agreed to resolve the litigation and entered into a confidential settlement agreement (the "Agreement").[2] Under the terms of the Agreement, the parties agreed that Petitioners would receive a payment as described in the Agreement, and that Cintrón would be able to submit a claim for LTD benefits to the Benefit Plan Review Committee (the "Committee"), the administrative committee for initial appeals, subject to the requirements of the LTD Plan. The parties also agreed that all remaining claims would be dismissed with prejudice, except that the claim for LTD

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[1] The Complaint and its subsequent Amended Complaint also alleged that Cintrón was entitled to certain pension and other benefits . Petitioners also alleged that the LTD Plan Administrator had failed to comply with requests for information and materials, and claimed that they were entitled to punitive damages in the amount of $10,000,000. The cause of action for damages was dismissed on December 21, 2000. See District Court Dkt. #24.

[2] Petitioners have filed the Agreement under seal before this Honorable Court. Respondents have separately filed the Exhibits to the Agreement (e.g., the LTD Plan), as an Appendix to this Opposition.

benefits under ERISA § 502(a)(1)(B) would be dismissed without prejudice. In the event that Cintron's claim for LTD benefits was denied, the District Court could review whether the Committee acted arbitrarily and capriciously. On August 14, 2002, the District Court issued a Judgment approving the terms of the Agreement. See District Court Dkt. #77.

Subsequently, Cintrón filed a claim for LTD benefits with the Committee. Pursuant to the terms of the LTD Plan, the Committee requested that she undergo an independent medical evaluation by a neurologist and a psychiatrist to assist the Committee in completing its evaluation of her claim. Despite repeated requests and her initial agreement to complete the evaluations, Cintrón failed to comply with the requests. Based on the information provided by Cintrón with her claim, the Committee determined that she failed to demonstrate that she was "disabled" under the terms of the LTD Plan. In addition, it found that she had failed to cooperate with the LTD evaluation process. Therefore, Cintrón's claim was denied.

Despite Cintron's ability under the Agreement to exhaust her administrative remedies by appealing the Committee's denial to the Employee Benefits Committee ("EBC"), the LTD plan administrator, Petitioners filed various motions seeking to set aside the Agreement between January and June 2003. Those motions were denied. Accordingly, Cintrón subsequently appealed the denial of LTD benefits to the EBC. Cintrón, however, again failed to complete an independent medical evaluation, as requested by the EBC and required by the LTD Plan. Based on its review of the information before it, the EBC upheld the denial of Cintrón's claim. The EBC found that it was unable to verify her claimed disability and that she failed to provide the necessary information to support

her entitlement to disability benefits pursuant to the terms of the LTD Plan.

On September 25, 2003, Petitioners requested that the District Court review the EBC's denial of the LTD claim. See District Court Dkt. #90. Respondents timely opposed Petitioner's request. See District Court Dkt. # 93. By order dated November 24, 2003, the District Court denied Petitioner's motion for review of the denial of LTD benefits. See District Court Dkt. #95.

Petitioners did not file an appeal from the November 24, 2003 Order but, instead, on December 8, 2003, they filed a Motion to Reconsider under Rule 59(e) of the Federal Rules of Civil Procedure. In response to the motion, the District Court issued an Order dated December 19, 2003, denying[3] Petitioners' motion to reconsider and stating that "[t]he reasons appear from the record and are summarized in dkt #93". See District Court Dkt. #98. Petitioners did not file an appeal from this Order within 30 days after its issuance.

Instead, on January 8, 2004, Petitioners filed yet another motion, this time requesting that the District Court expressly deny or grant their motion to reconsider. See District Court Dkt. #99. By order dated February 25, 2004, the District Court again denied Petitioners' motion for reconsideration, noting that it had already been denied. In addition, in a separate order dated February 25, 2004, the District Court found that several other motions were moot and determined that the case was "closed for all purposes". See District Court Dkt. #'s 101, 102.

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[3] The case docket reflects that the Court "terminated" the Motion for Reconsideration. See District Court Dkt. #98.

On March 22, 2004, Petitioners filed a Notice of Appeal before the United States Circuit Court of Appeals for the First Circuit ("First Circuit"). See District Court Dkt. #103. Petitioners sought to appeal the August 14, 2002 Judgment, and all other subsequent orders entered by the District Court.

On October 1, 2004, The First Circuit dismissed Petitioners' appeal in its entirety. The First Circuit concluded that Petitioners failed to timely appeal the Judgment and several other orders issued by the District Court. It also concluded that, as to the two February 25, 2004 orders from which Petitioners timely appealed, the District Court had not abused its discretion in denying Petitioners' requests. The captioned petition followed.

Petitioners now question the First Circuit's decision regarding the untimeliness of their appeal and the District Court's appropriate determination that the timely appealed orders were without merit, and the merits of Respondents' denial of the LTD benefits claim. Petitioners' unfounded claims have been reviewed multiple times and denied by the District Court and the First Circuit. Therefore, Certiorari should not be granted by this Honorable Court.

CERTIORARI SHOULD NOT BE GRANTED

A. Standard for Granting Certiorari

"Review on a writ of certiorari is not a mater of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for a writ of certiorari will be granted only for compelling reasons." Id. Petitioners have not presented any compelling reasons for this Honorable Court to exercise its discretionary jurisdiction over their attempted appeal of the dismissal of their claims. Indeed, their claims were appropriately addressed by the

District Court and First Circuit below, and should not be disturbed by this Honorable Court.

B. The First Circuit Correctly Determined that Petitioners' Appeal of Several Orders Was Untimely

Rule 27(c) of the Local Rules of the First Circuit, in relevant part, provides that "[a]t any time, on such notice as the court may order, on motion of appellee or sua sponte, the court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented." See Loc. Fed. R. App. P. 27 (c).

An appeal from a judgment or order in a civil case "must be filed with the district clerk *within 30 days* after the judgment or order appealed from is entered". See Fed. R. App. P. 4 (a) (1) (A) (emphasis added). "Timely filing a notice of appeal is 'mandatory and jurisdictional'". Pérez Pérez v. Popular Leasing Rental, 993 F.2d 281, 283 (1st Cir. 1993), *citing* Browder v. Director, Dep't. of Corrections, 434 U.S. 257, 264 (1978).

Under the applicable rules, it is clear that the First Circuit correctly concluded that Petitioners were untimely in seeking to appeal the August 14, 2002 judgment and the July 1, 2004 order. Petitioners did not file an appeal within thirty days of either the August 14, 2002 judgment or the July 1, 2004 order, nor did they file any motions to alter or amend the judgment, or to reconsider the order, within 10 days of their respective issuances, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Thus, the First Circuit did not have jurisdiction to entertain an appeal of such entries.

On the other hand, the order entered on November 24, 2003 denying Petitioners' request to reopen the case and review the denial of disability benefits to Cintrón was subject to a timely motion to reconsider, filed on December 8, 2003. See District Court Dkt. #97. Therefore, the time to file an appeal was tolled until the District Court denied said motion through its order dated December 19, 2003.[4] See District Court Dkt. #98. However, once that order was issued, the 30-day limit to appeal began.

Petitioners did not file an appeal of the December 19, 2003 Order but, instead, on January 8, 2004 they filed yet another motion requesting a denial or grant of their motion to reconsider. See District Court Dkt #100. This last motion is certainly not one of those contemplated by Fed. R. App. P. 4(a)(4)(A) as one which would toll the limit to appeal. Therefore, when Petitioners filed their Notice of Appeal before the First Circuit on March 22, 2003, the time limit to appeal from the November 24, 2003 and December 19, 2003 orders had expired. After all, "[a second] motion for reconsideration that is served more than ten days after the entry of judgment has no effect upon appeal time, which runs from the entry of the original order denying ... an alteration or amendment of the judgment". Acevedo-Villalobos, 22

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[4] A timely motion to alter or amend judgment under Rule 59(e) of the Federal Rules of Civil Procedure tolls the time for filing a notice of appeal, "and the time for filing the notice starts to run from the entry of the order denying said motion". Acevedo-Villalobos v. Hernández, 22 F.3d 384, 387 (1st Cir. 1994). See also United States v. 789 Cases of Latex Surgeon Gloves, 13 F.3d 12, 14 (1st Cir. 1993); Fed. R. App. P. 4(a)(4)(A). This motion is timely and, therefore, tolls the time to file a notice of appeal, *only* if served within 10 days after the entry of the judgment or order. See Fed.R.Civ.P. 59(e).

F.3d at 389, *citing* 6A James W. Moore et al., Moore's Federal Practice, ¶ 59.13[3] at 59-282 (2d ed. 1993). Consequently, the First Circuit also lacked jurisdiction and, thus, correctly concluded that Petitioners were also barred from seeking relief in connection with the November 24 and December 19, 2003 orders.

Inasmuch as Petitioners' appeal before the First Circuit was untimely, the judgment and orders for which the period to file an appeal had transpired became final, and could not be revisited by said Court. Accordingly, this Honorable Court should decline Petitioners' motion for review.

C. The First Circuit Correctly Determined that the District Court Did Not Abuse Its Discretion in Denying the Orders From Which A Timely Appeal Was Filed

The First Circuit has discretion to deny an appeal when it "clearly appear[s] that no substantial question is presented", which would require it to consider the appeal. Loc. Fed. R. App. P. 27(c). Given that the August 14, 2002 judgment and the November 23, 2003 and July 1, 2004 orders were not timely appealed, only the two February 25, 2004 orders remain. These orders simply clarified that the District Court (1) had already denied Petitioners' motion to reconsider, and (2) declared as moot a motion filed by Petitioners' attorneys to withdraw from legal representation and two motions for extension of time. See District Court Dkt. #'s 101, 102.

These orders presented no substantial questions for the First Circuit to review. Petitioners claim that the motions which resulted in the two February 25, 2004 orders should toll the period to file an appeal is without merit. Contrary to Petitioners' position, it has been repeatedly held that "[a]llowing subsequent motions to repeatedly toll the filing

period for a notice of appeal would encourage frivolous motions and undermine a fundamental canon of our legal system, to promote the finality of judgments". Aybar v. Crispin-Reyes, 118 F.3d 10, 14 (1st Cir. 1997), *citing* Glinka v. Maytag Corporation, 90 F.3d 72, 74 (5th Cir. 1996). See also United States v. Helmsley, 864 F.2d 266, 268 (2d Cir. 1998) (finality is "an essential tool in the efficient administration of justice").

Petitioners argue they did not file a "second motion for reconsideration", but that it was "a request for ruling for the First Reconsideration". See Petition for Writ of Certiorari at 23. Contrary to their argument, however, Petitioners have disregarded the fact that the District Court denied[5] their Rule 59(e) motion to reconsider on December 19, 2003 by stating that "[t]he reasons appear from the record and are summarized in dkt #93". See District Court Dkt. #98. Therefore, their motion for the District Court to either deny or grant their motion to reconsider was, in fact, a second motion for reconsideration.

Just as "an appeal from the denial of a Rule 59(e) motion is not an appeal from the underlying judgment"[6], an appeal from an order that simply reiterates a previous ruling on a motion to reconsider is not an appeal of the underlying denial of the motion to reconsider. Therefore, the First Circuit correctly concluded that the District Court had not abused its

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[5] The case docket reflects that the Court "terminated" the Motion for Reconsideration. See District Court Dkt. #98.

[6] Mariani-Giron v. Acevedo-Ruiz, 945 F.2d 1, 3 (1st Cir. 1991). See also Rodríguez-Antuna v. Chase Manhattan Bank Corp., 871 F.2d 1, 2-3 (1st Cir. 1989).

discretion in denying the second motion to reconsider through its February 25, 2004 order.

Similarly, in applying its own well-settled precedent, the First Circuit did not err when it reviewed the District Court's decision to deny the motion for an extension of time to file yet another motion for reconsideration and to appeal under an abuse of discretion standard. See Mirpuri v. Act Manufacturing, Inc., 212 F.3d 624, 627 (1st Cir. 1994) (motions to extend time for filing an appeal are reviewed for abuse of discretion); Gochis v. Allstate Ins. Co., 16 F.3d 12, 14 (1st Cir. 1994). The First Circuit determined that Petitioners had sufficient time to file a timely notice of appeal, yet failed to do so, and that there was no justification for their failure. Based on this fact, the First Circuit concluded that the District Court did not abuse its discretion. In applying that same standard here, there is no basis to find that the "lower court committed a clear error of judgment in the conclusion it reached after weighing the relevant factors." Pinkay v. Andrews, 389 F.3d 853, 857 (9th Cir. 2004). Therefore, the First Circuit's decision should be left undisturbed by this Honorable Court.

D. On the Merits, the First Circuit Did Not Err When It Upheld the Denial of Petitioners' Claim for LTD Benefits

Even if this Honorable Court were to conclude that Petitioners filed a timely appeal from the District Court's decision not to further review the denial of Cintrón's LTD benefits claim, a brief overview of the evidence demonstrates that the Committee did not act arbitrarily or capriciously when it denied the claim.

Pursuant to the August 14, 2002 Agreement, Cintrón agreed to submit her claim for LTD benefits to the Committee. Accordingly, on August 16, 2002, Cintrón submitted her claim. See, Request for Review, District Court Dkt. #90, at Exhibit 1.

Petitioners claim that the Agreement makes no mention of Cintrón's completion of an independent medical evaluation. Petitioners' argument fails to recognize that the Agreement expressly incorporated the LTD Plan itself, and provided that the claim would be subject to the requirements of the LTD Plan. See Agreement at ¶ 3. Under Section 6.02 (b) of the LTD Plan, the Committee may require an employee to submit to medical evaluations to determine the extent of a claimed illness or injury. The Committee may require the employee to undergo such examination as often as reasonably necessary to determine whether the employee meets the definition of "disabled" under Section 2.01 (a) (5) of the LTD Plan. See Appendix A to this Opposition.

Thus, and pursuant to Section 6.02(b) the Plan, by letter dated September 23, 2002, the Committee requested that Cintrón undergo an independent medical evaluation by a neurologist and a psychiatrist. To provide flexibility for Cintrón to choose the physicians most convenient for her, the Committee provided her the names of three (3) physicians in each discipline for her to choose the one she preferred. See, District Court Dkt. #90, at Exhibit 3. Instead of choosing her preferred physician, however, on September 26, 2002, Cintrón responded by questioning the Committee's authority to request that she participate in an independent medical evaluation. See, District Court Dkt. #90, at Exhibit 3.

As a result of Cintrón's non-compliance, which was beyond the Committee's control, on October 2, 2002, the

Committee notified her that a thirty (30) day extension would be necessary in order to render its decision. The extension was required to allow Cintrón to submit to the requested independent medical evaluation or decline the request and leave the matter to be decided based on the information previously submitted by her. The Committee expressly advised Cintrón that the independent evaluations were warranted because there appeared to be several areas of poor correlation between her reported symptoms and the diagnostic studies she provided. Cintrón was requested to provide the Committee her election of the preferred option within ten (10) days to give enough time for the arrangements to be made with the physicians and sufficient time to be allowed for them to render a report and for the Committee to consider them. See, Circuit Court Dkt. #90, at Exhibit 4.

On October 12, 2002, Cintrón provided additional reports to the Committee but failed to respond to its request for the independent medical evaluations. See, District Court Dkt. #90, at Exhibit 5. Subsequently, on October 21, 2002, Petitioners' then counsel requested: 1) that the Committee again inform Cintrón of the need for an independent medical evaluation; 2) that the Committee select the doctors for the evaluation, inasmuch as Cintrón was unwilling to do so; and 3) that she be informed of the dates of the examinations and she would appear to such evaluations. See, Respondents' Opposition to Request for Review and Petition for Oral Argument, District Court Dkt. #93, at Exhibit 1.

As requested, on October 28, 2002, Cintrón was informed of the two physicians selected to conduct the independent medical evaluations and the dates of those examinations. Pursuant to paragraph seven (7) of the Agreement, the Committee provided notice of an additional thirty (30) day extension for the Committee to render its decision to allow

Cintrón to attend the medical evaluations and for the doctors to render their reports. See, District Court Dkt. #93, at Exhibit 2.

Notwithstanding, on November 4, 2002, Cintrón failed to attend the scheduled medical appointment with Dr. Carlos Luciano, Neurologist. See, District Court Dkt. #93, at Exhibit 3. On November 8, 2002, Cintrón also refused to undergo the independent medical evaluations. See, District Court Dkt. #93, at Exhibit 4. Instead, on November 13, 2002, Cintrón submitted to the Committee a medical certificate from her treating psychiatrist, Dr. Héctor Torres. See District Court Dkt. #90, at Exhibit 6.

The Committee met on November 13, 2002 to review Cintrón's claim for benefits. The Committee determined that she failed to provide the necessary information to support her entitlement to disability benefits pursuant to the terms of the LTD Plan. Specifically, the Committee concluded that Petitioner

> complained of severe upper arm pain, neck pain and back pain for several years. The severity of [her] symptoms, however, are poorly correlated with the diagnostic studies performed between 1998-2002. X-rays, CT scans, MRI scans, bone scans and Doppler flow studies suggest mild degenerative disc disease without significant flow obstruction or nerve root compression. Such findings are not inconsistent with mild symptoms and/or the aging process. In addition, an emotional disease component is suggested by some evaluators, but the extent of the disease is unclear as well as what effective interventions have been offered and [her] compliance with such recommendations... [I]t was the lack of expected correlation between

> objective diagnostic studies and [her] claimed disability that prompted the request that [she] undergo an independent evaluation of both [her] physical and psychological health.

Thus, as a result of the lack of evidence supporting a disability as defined in the LTD Plan, as well as the fact that Cintrón refused to participate in an independent medical evaluation, the Committee decided to deny the claim. Cintrón was informed of the Committee's decision on December 2, 2002, including the specific reasons for the denial of her extended disability benefits and notice of her right to appeal said decision within 180 days of her receipt of the denial letter. See, District Court Dkt. #90, at Exhibit 8.

On May 29, 2003, Cintrón filed her appeal before the Employee Benefits Committee. See District Court Dkt. #90, at Exhibit 12. On June 5, 2003, the EBC acknowledged receipt of Cintrón's appeal and informed her that it would review her claim at its next scheduled meeting on June 23, 2003. Plaintiff was further informed that she should submit any additional information to the EBC before June 16, 2003, so that it could be considered. See District Court Dkt. #90, at Exhibit 11. No new information was provided.

On July 3, 2003, the EBC informed Cintrón that it had met on June 23, 2003 and that after a review of the information provided by her as part of her appeal, it was unable to verify her claimed disability. To further evaluate the appeal, the EBC requested that Cintrón receive an independent medical evaluation by both a neurologist and a psychiatrist. Once again, Cintrón was provided with a list of three (3) physicians in each discipline for her to choose or to have the physician selected for her. Cintrón was advised that should she refuse to submit herself to the independent medical

evaluations, the EBC would be required to review her appeal without such information and might deny her request based on her failure to comply with the terms of the Plan or because it lacked necessary information to confirm her claimed disability. The EBC further requested her to consider said communication as notice of the EBC's need for a forty-five (45) day extension to render its decision consistent with Section 6.05(b) of the Plan. See District Court Dkt. #90, Exhibit 13. On July 16, 2003, Cintrón did not agree to attend the independent medical evaluations. See, District Court Dkt. #90, Exhibit 14.

On August 22, 2003, the EBC contacted Cintrón by phone to determine whether she had undergone any of the independent medical evaluations or planned to do so. At that time, she indicated that she had not participated in the same. On August 25, 2003, the EBC advised Cintrón of the possibility that the EBC extend the ninety (90) day review period provided in Section 6.05(b) of the Plan for an additional thirty (30) days, up to and including September 26, 2003, for the Committee to decide her appeal if she wanted to participate in the independent medical evaluations. The EBC further informed plaintiff that

> [a]s described in the Committee's July 3, 2003 correspondence to you, the Committee requested (as did the Benefit Plan Review Committee before it) that you see a neurologist and a psychiatrist so that the Committee could further evaluate your claim to disability benefits. In response, you claimed that the Committee was modifying the Plan's requirements and questioned the Committee's authority to request an independent medical evaluation. Moreover, you indicated in your July 16 correspondence that you would not comply with the Committee's request

> without imposing additional conditions (e.g., requiring a medical questionnaire for your physicians). Last Friday, you confirmed that you had not seen any of the physicians outlined in the Committee's July 3 correspondence. . . . While you previously indicated a willingness to the Benefit Plan Review Committee to see physicians if it chose them and later failed to attend scheduled appointments with the selected physicians, the Committee is willing to agree to your request. . .

Therefore, the EBC once again allowed Cintrón to attend the independent medical evaluations so that it could consider such information to evaluate her claim. The EBC requested that Cintrón confirm whether she wanted additional time to attend the evaluations. See, District Court Dkt. #90, at Exhibit 16. On that same date, Cintrón responded to the EBC by again questioning its authority to request that she participate independent medical evaluations at all. See, District Court Dkt. #90, at Exhibit 15. Subsequently, on August 25, 2003, Cintrón refused to extend the review period so that she could attend any medical evaluations. See, District Court Dkt. #90, at Exhibit 17, page 2.

On August 27, 2003, the EBC denied Cintrón's appeal of the denial of LTD benefits. The EBC reiterated that, based on the information provided by her, she failed to provide necessary information to support her entitlement to disability benefits as required by the Plan. Specifically, the EBC determined that there were several areas of poor correlation between Cintrón's reported symptoms and the diagnostic studies provided by her. Moreover, the EBC also considered as a factor Cintrón's refusal to comply with the Committee's request that she participate in independent medical evaluations. See, District Court Dkt. #90, at Exhibit 18.

Both pursuant to the terms of the Agreement and the LTD Plan, inasmuch as discretionary authority is granted to the EBC to interpret the terms of the Plan, as well as to make decisions under the LTD Plan, the applicable standard in reviewing the denial of benefits is the arbitrary and capricious standard. See Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). It is, of course, the hallmark of such review that ". . . a court is not to substitute its judgment for that of the [decision-maker]." Terry v. Bayer Corp., 145 F.3d 28, 40 (1st Cir. 1998) (citing Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)). Rather, in the ERISA context, it has been held that under the arbitrary and capricious standard, " . . . a fiduciary's interpretation of a plan will not be disturbed if reasonable." Terry, 145 F.3d at 40 (citing DeWitt v. Penn-Del Directory Corp., 106 F.3d 514, 520 (3d Cir.1997)). Simply put, the administrator's determination will be upheld if it was within its authority, reasoned, and supported by substantial evidence in the record. See Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 183-184 (1st Cir. 1998); Donaho v. FMC Corporation, 74 F.3d 894 (8th Cir. 1996).

Accordingly, "[w]hen such a power [to interpret the terms of the plan and to determine eligibility for benefits] has been conferred, the judicial role is limited to determining whether the. . . [Committee's] interpretation was made rationally and in good faith- *not whether it was right*." Brown v. Retirement Committee of Briggs & Straton, 797 F.2d 521, 529 (7th Cir. 1986). (Emphasis ours).[7] As a corollary, "substantial

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[7] See also Snow v. Standard Ins. Co., 87 F.3d 327, 332 (9th Cir. 1996), *overturned on other grounds by* Kearney v. Standard Ins. Co., 175 F.3d 1084, 1089-1090 (9th Cir. 1999) (*en banc*) (the abuse of discretion standard ". . . does not permit overturning a decision where there is relevant evidence [that] reasonable minds

evidence" to support an ERISA plan administrator's decision means evidence which is reasonably sufficient to support a conclusion, *even in the presence of contradictory evidence*. See Donaho v. FMC Corp., 74 F.3d 894, 899-900 (8th Cir. 1996), *overturned on other grounds by* Black & Decker Disability Plan v. Nord, 538 U.S. 822 (2003); Smith v. Unum Life Ins. Co. of America, 305 F.3d 789, 794 (8th Cir. 2002); Elliott v. Sara Lee Corporation, 190 F.3d 601, 606 (4th Cir. 1999); Ellis v. Metropolitan Life Insurance Co., 126 F.3d 228, 234 (4th Cir. 1997); Miller v. United Welfare Fund, 72 F.3d 1066, 1072 (2d Cir. 1995). Thus, absent bad faith or conflict of interest, a court may only overturn a plan administrator's decision if it is ". . without reason, unsupported by substantial evidence or erroneous as a matter of law." Donaho, 74 F.3d at 900. Such is not the situation in this case.

Pursuant to the terms of the LTD Plan, the term "disability" is defined as "the inability of an Employee to engage, for remuneration or profit, in any occupation commensurate with the Employee's education, training, and experience, provided that the inability results from an illness or accidental bodily injury that requires the Employee to be under the regular care of a Licensed Physician." See Section 2.01(a)(5) of Appendix A to this Opposition. Upon a review of the evidence submitted by Cintrón in support of her claim for LTD benefits, both the Committee and the EBC concluded that it was not sufficient to demonstrate a "disability" as defined in the LTD Plan. Specifically, it was concluded that, although Cintrón complained of severe upper arm pain, neck pain and back pain for several years, the severity of her

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might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence.").

symptoms were poorly correlated with the diagnostic studies performed between 1998 and 2002. Both the Committee and the EBC reviewed the information provided by Petitioners, and concluded that it suggested mild degenerative disc disease without significant flow obstruction or nerve root compression, not inconsistent with mild symptoms or the aging process. In addition, the Committee and the EBC found that, although an emotional disease component was suggested by some evaluators, the extent of the disease was unclear as well as what effective interventions have been offered, or Cintron's compliance with such recommendations.[8]

Pursuant to the express terms of the LTD Plan, Respondents requested that Cintrón submit to an independent medical evaluation to assist it in evaluating her claim for benefits. She refused to do so on multiple occasions. Her refusal to do so alone constituted grounds for the denial of benefits. Nevertheless, the Committee and the EBC reviewed the information before it and determined that they lacked necessary information to confirm her claimed disability. Accordingly, her claim was denied. In light of the above, and given the discretionary authority granted to the EBC to interpret the terms of the LTD Plan and to make decisions in connection with eligibility for benefits, it is clear that Respondents did not act arbitrarily or capriciously in denying Petitioners' request for LTD benefits.

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[8] Even a brief review of the denial letters issued by the Committee and the EBC addresses Petitioners' unfounded claims that Cintron was not given the specific reasons for the denial of her LTD benefits claim. See Petitioner's Appendix at 351-355, 437-440.

CONCLUSION

Petitioners' claims are without merit. As determined by the District Court and the First Circuit Court of Appeals, Respondents did not act arbitrarily or capriciously in denying Petitioners' request for LTD benefits. Accordingly, Petitioners' Petition for Writ of Certiorari should be denied.

This 13th day of May, 2005.

Respectfully submitted,

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ELI LILLY AND COMPANY

EMPLOYEE WELFARE PLAN

Effective January 1, 1986
As Amended Effective January 1, 2002

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SECTION 1. ESTABLISHMENT

1.01. The Establishment of the Welfare Plan.

Eli Lilly and Company has established, effective January 1, 1986, a plan as hereinafter set forth for providing medical, dental, extended disability, life insurance, holiday, vacation, dependent day care, and other benefits to eligible employees of Eli Lilly and Company and its participating subsidiary and affiliated companies. The plan, as restated herein as of January 1, 1995, and as amended from time to time, shall be known as The Lilly Employee Welfare Plan. The Lilly Employee Welfare Plan is intended to be an "employee welfare benefit plan" as that term is defined in section 3(1) of ERISA.

1.02. Component Plans.

The Lilly Employee Welfare Plan shall be composed of the specific employee welfare benefit Component Plans designated in Schedule A, as amended from time to time.

SECTION 2. DEFINITIONS

2.01. Definitions.

(a) The following words and phrases as used in the Welfare Plan shall have the following meanings unless a different meaning is required by the context:

(1) Board of Directors. The term "Board of Directors" means the Board of Directors of the Company.

(2) Company. The term "Company" means Eli Lilly and Company.

(3) Component Plan. The term "Component Plan" means an employee welfare benefit plan that is designated on Schedule A as one of the component plans of the Welfare Plan.

(4) Employee Benefits Committee. The term "Employee Benefits Committee" means the Committee by that name appointed by the Board of Directors for the purpose of administering the Welfare Plan.

(5) Employer. The term "Employer" means the Company and any subsidiary or affiliated company specifically designated by the Board of Directors as such for the purposes of the Welfare Plan, which has heretofore adopted or which hereafter adopts the Welfare Plan by resolution of its own board of directors and which has not elected to terminate or withdraw from its participation in the Welfare Plan.

(6) ERISA. The term "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(7) Insurance Contract. The term "Insurance Contract" means a contract or contracts between an Employer and an Insurer for the provision of benefits under a Component Plan.

(8) Insurer. The term "Insurer" means an insurance company or companies with whom an Employer has entered into an Insurance Contract for the provision of benefits under a Component Plan.

(9) Trust. The term "Trust" means the Eli Lilly and Company Master Trust for Employee Benefits, as amended from time to time. The agreement establishing the Trust is hereby incorporated by reference into, and made a part of, the Welfare Plan.

(10) Trustee. The term "Trustee" means the trustee of the Trust.

(11) Welfare Plan. The term "Welfare Plan" means The Lilly Employee Welfare Plan.

(12) Year. The term "Year" means the fiscal year of the Welfare Plan commencing January 1 and ending December 31.

(b) Gender. Masculine pronouns shall refer both to males and to females.

SECTION 3. BENEFITS

3.01. Coverage and Benefits.

The employees and other individuals covered and the benefits provided by each Component Plan shall be determined exclusively by the Component Plan instrument, and by the Insurance Contract, if any, that relates to such Component Plan.

3.02. Payment of Benefits.

Benefits provided by the Component Plans may be paid by the Trust, an Insurer, or, to the extent provided in a Component Plan, an Employer. The liability of the Trust, the Trustee, an Insurer, or an Employer to provide benefits under a Component Plan shall be limited by the terms of the Component Plan instrument, the Insurance Contract relating to such Component Plan, if any, the Trust agreement, and this Welfare Plan instrument.

3.03. Tax Withholding.

The amount of any benefit paid from the Trust to a participant or beneficiary under a Component Plan shall be reduced by the amount of any income tax or employment tax that is required to be withheld pursuant to any applicable federal, state, or local law or any applicable foreign law.

3.04. Other Adjustments.

The amount of any benefit paid from the Trust to a participant or beneficiary under a Component Plan shall be reduced by the amount of any excess benefit previously paid from the

Trust to that participant or beneficiary under that Component Plan, regardless of whether such excess payment was made by reason of an error of the Employee Benefits Committee or the Trustee or by reason of false or misleading information furnished by the participant or beneficiary or any other person. Such reduction shall continue until the entire amount of any such excess payments has been recovered.

3.05. Payment to Participant or Beneficiary.

(a) Except as otherwise provided in paragraph (b), below, benefit payments under a Component Plan shall be made to the participant in the Component Plan or his beneficiary, if any.

(b) If the Employee Benefits Committee determines that a participant or beneficiary is not competent, the Employee Benefits Committee may make benefit payments to the court-appointed legal guardian of the participant or beneficiary, to an individual who has become the legal guardian of the participant or beneficiary by operation of state law, or to another individual whom the Employee Benefits Committee determines to be entitled to receive such payments on behalf of the participant or beneficiary.

(c) If a payment of benefits is made under a Component Plan to a third party whom the Employee Benefits Committee has determined to be entitled to receive such payment on behalf of a participant or beneficiary, the Component Plan and the Employee Benefits Committee shall be relieved, to the fullest extent permitted by law, of any obligation to make a duplicative payment to or on behalf of such participant or beneficiary.

SECTION 4. ADMINISTRATION

4.01. Administrative Committee.

(a) The Welfare Plan shall be administered by the Employee Benefits Committee appointed by the Board of Directors. Except as otherwise provided in a Component Plan or in paragraph (b), below, each of the Component Plans shall also be administered by the Employee Benefits Committee. The Board of Directors may remove any member of the Employee Benefits Committee.

(b) In Component Plans in which benefits are provided by an Insurer under an Insurance Contract, the Insurer shall administer those portions of the Component Plan that are governed by the Insurance Contract.

4.02. Named Fiduciary.

(a) The Employee Benefits Committee shall be the "named fiduciary" with respect to the Welfare Plan for purposes of ERISA. Except as otherwise provided in a Component Plan or in paragraph (b), below, the Employee Benefits Committee shall be the "named fiduciary" with respect to each of the Component Plans for purposes of ERISA.

(b) In each Component Plan in which benefits are provided by an Insurer under an Insurance Contract, the Insurer shall be the "named fiduciary" for purposes of ERISA with respect to the portions of the Component Plan that are governed by the Insurance Contract.

4.03. Powers and Duties of the Employee Benefits Committee.

In addition to any implied powers and duties that may be needed to carry out the provisions of this instrument, the Employee Benefits Committee shall have the following specific powers and duties with respect to the Welfare Plan, and with respect to any Component Plan (or portion thereof) that the Employee Benefits Committee administers:

(a) To make and enforce such rules and regulations as it shall deem necessary or proper for the efficient administration of the Component Plans;

(b) To interpret this Welfare Plan instrument and any Component Plan instrument, and to decide any and all matters arising thereunder, including the right to remedy possible ambiguities, inconsistencies or omissions;

(c) To authorize disbursements from the Trust; provided that any instructions of the Employee Benefits Committee authorizing disbursements from the Trust shall be in writing and signed by a member of the Employee Benefits Committee or a delegate that has been given such authority;

(d) To employ one or more persons to render advice with respect to any of its responsibilities under the Welfare Plan or any Component Plan(s).

4.04. Delegations of Authority By the Employee Benefits Committee.

The Employee Benefits Committee may, in its discretion, delegate to any other person or persons authority to act on behalf of the Employee Benefits Committee, including but not limited to the authority to make any determination or to sign

checks, warrants, or other instruments incidental to the operation of the Welfare Plan or any Component Plan (or portion thereof) that the Employee Benefits Committee administers, or to the making of any payment specified therein.

4.05. Employment of Assistants.

SECTION 6. AMENDMENT AND TERMINATION

6.01. Amendment or Termination by the Company.

It is the intention of the Company that the Welfare Plan and its Component Plans will continue indefinitely. However, the Company reserves the right to amend, modify, suspend, revoke, or terminate the Welfare Plan or any Component Plan, in whole or in part, at any time and without notice, by resolution of the Board of Directors. The Employee Benefits Committee also shall have the right to amend or modify the Welfare Plan or any Component Plan, except that the Employee Benefits Committee may not amend or modify this Section 6 or the following Component Plans: (1) Change in Control Severance Pay Plan For Employees; (2) Change in Control Severance Pay Plan For Select Employees; and (3) The Eli Lilly and Company Holiday and Vacation Plan. The Welfare Plan and any Component Plan may be amended retroactively, in the discretion of the Board of Directors or the Employee Benefits Committee, to the extent the Employee Benefits Committee has authority to amend such plans as described herein.

6.02. Insured Component Plans --Termination of the Contract by an Employer.

In any Component Plan (or portion of such Plan) in which benefits are paid by an Insurer pursuant to an Insurance Contract, the Employer who is party to the Insurance Contract may terminate the Insurance Contract at any time by providing the Insurer with such written notice as may be required under the terms of the Insurance Contract. An Employer may enter into contracts with other insurers, or provide benefits exclusively through the Trust or through such

other funding arrangement as the Employer may establish for the purpose of providing employee welfare benefits under the Component Plan.

6.03. Amendment of Schedule A.

The Board of Directors may amend the Welfare Plan by adding a Component Plan to, or removing a Component Plan from, Schedule A.

6.04. Effect of Amendment or Termination.

(a) No amendment to or termination of the Welfare Plan or any Component Plan shall cause or permit the Trust to be used for any purpose other than the defrayal of administrative expenses and payment to participants and beneficiaries of the benefits provided under a Component Plan, except as provided in subsections 3.03 and 5.02(c).

(b) Upon termination of any Component Plan, the Trustee shall use the funds of the Welfare Plan held in the Trust to pay benefits that participants and beneficiaries have become entitled to receive under the terms of the Component Plan or, if applicable, to pay insurance premiums due an Insurer under the Component Plan, as of the date of termination, and to pay the administrative expenses incurred by the Welfare Plan and the Trust before and in connection with the termination, both in accordance with the written directions of the Employee Benefits Committee.

(c) Upon termination of the Welfare Plan, the Trustee shall use the funds of the Welfare Plan held in the Trust to pay benefits that participants and their designated beneficiaries

have become entitled to receive under the terms of the Welfare Plan, and to pay the administrative expenses incurred by the Welfare Plan and the Trust before and in connection with the termination, both in accordance with the written directions of the Employee Benefits Committee. The Trustee shall dispose of the Welfare Plan's remaining funds held in the Trust in accordance with the written directions of the Employee Benefits Committee. Such directions shall require the funds to be disposed of for the sole benefit of participants in the Welfare Plan and their beneficiaries, except as provided in subsections 3.03 and 5.02(c).

SECTION 7. MISCELLANEOUS

7.01. Governing Law.

(a) The Welfare Plan shall be governed by and administered under ERISA, and, to the extent not preempted thereby, under the laws of the State of Indiana.

(b) Except as otherwise provided in a Component Plan or in paragraph (c), below, the Component Plans shall be governed by and administered under ERISA, and, to the extent not preempted thereby, under the laws of the State of Indiana.

(c) In Component Plans in which benefits are provided by an Insurer under an Insurance Contract, the Insurance Contract shall be governed by ERISA, and, to the extent not preempted thereby, under such state law as is applicable to the Insurance Contract.

7.02. Agent for Service for Process.

The agent for service of legal process shall be the Secretary of Eli Lilly and Company, Lilly Corporate Center, Indianapolis, Indiana 46285

7.03. No Vested Rights.

To the maximum extent permitted by law, no person shall acquire any right, title, or interest in or to any portion of the Trust otherwise than by the actual payment or distribution of such portion under the provisions of the Welfare Plan or any Component Plan, or acquire any right, title, or interest in or to any benefit referred to or provided for in the Welfare Plan

or any Component Plan otherwise than by actual payment of such benefit.

7.04. Non-Alienation.

To the maximum extent permitted by law, no participant, beneficiary, or any other person shall have any right or power, by draft, assignment, or otherwise, to assign, mortgage, pledge, or otherwise encumber in advance any right, title, or interest in or to any portion of the Trust, or any benefit provided under the Welfare Plan or any Component Plan, or to give any order in advance upon the Trustee therefore; and every attempted draft, assignment, or other disposition thereof shall be void.

7.05. Spendthrift Provisions.

To the maximum extent permitted by law, the Trust shall not be liable in any way, whether by process of law or otherwise, for the debts or other obligations of any participant, beneficiary, or other person. Benefits payable under the Welfare Plan or any Component Plan shall not be subject, in any manner, to anticipation, alienation, sale, transfer, or assignment by any person, and any attempt to anticipate, alienate, sell, transfer or assign such benefits shall be void.

7.06. Non-Guarantee.

Neither an Employer nor any plan fiduciary shall be held or deemed in any manner to guarantee the Trust against loss or depreciation.

7.07. Indemnification of Certain Fiduciaries.

(a) Persons Entitled to Indemnification. Each person who is a member of the Employee Benefits Committee, the Board of Directors of the Company, or an employee of the Company or of any subsidiary or affiliated company who acts in a fiduciary capacity or any other capacity with respect to the Welfare Plan, any Component Plan, or the Trust, shall be indemnified by the Company against any and all liability and reasonable expense that may be incurred in connection with, or resulting from, any claim, action, suit, or proceeding (whether actual or threatened, and whether civil, criminal, administrative, or investigative), or in connection with any appeal relating thereto, in which he may become involved as a party or otherwise by reason of acting in any such capacity or by reason of any action taken or not taken in such capacity, whether or not such person continues to hold a position with respect to the Welfare Plan, any Component Plan, or the Trust at the time such liability or expense is incurred, provided such person acted in good faith, in what he reasonably believed to have been the best interest of the Welfare Plan, any Component Plan, the Trust, or the Company, as the case may be (and in addition, in any criminal action or proceeding, such person had no reasonable cause to believe that his conduct was unlawful).

(b) Definition. As used in this subsection 7.07 the terms "liability" and "expense" shall include, but shall not be limited to, attorneys' fees and disbursements and amounts of judgments, fines, or penalties against, and amounts paid in settlement by, such persons.

(c) Termination of Proceeding by settlement or Judgment. The termination of any claim, action, suit, or proceeding,

civil or criminal, by judgment, settlement (whether with or without court approval) or conviction or upon a plea of guilty or of nolo contenders, or its equivalent, shall not create a presumption that such person did not meet the standards of conduct set forth in paragraph (a), above.

(d) Persons Successful on the Merits. Any person described in paragraph (a), above, who has been wholly successful, on the merits or otherwise, with respect to any claim, action, suit, or proceeding of the character described in paragraph (a), above, shall be entitled to indemnification as of right.

(e) Persons not Successful on the Merits. Except as provided in paragraph (d), above, any indemnification hereunder shall be made at the discretion of the Company, but only if (i) the Board of Directors, acting by a quorum consisting of directors who are not parties to or who have been wholly successful with respect to such claim, action, suit, or proceeding, shall find that the Employee Benefits Committee member, director, or employee described in paragraph (a), above, has met the standards of conduct set forth in paragraph (a), above, or (ii) independent legal counsel (who may be regular counsel of the Company) shall deliver to the Company its written opinion that such person has met such standards.

(f) Indemnification on Less Than All Claims or Issues. If several claims, issues, or matters of action are involved, a person described in paragraph (a), above, may be entitled to indemnification as to some matters even though he is not so entitled as to others.

(g) Advance of Costs. The Company may advance expenses to, or, where appropriate, may at its expense undertake the defense of, any person described in paragraph (a), above, upon receipt of an undertaking by or on behalf of such person to repay such expenses if it should ultimately be determined that he is not entitled to indemnification under this subsection 7.07.

(h) Applicability of Indemnification Provisions. The provisions of this subsection 7.07 shall be applicable to claims, actions, suits, or proceedings made or commenced after December 31, 1985, whether arising from acts or omissions to act occurring before or after such date.

(i) Effect upon Other Rights. The rights of indemnification provided hereunder shall be in addition to any rights to which any person concerned may otherwise be entitled by contract or as a matter of law, and shall inure to the benefit of the heirs, executors, and administrators of any such person.

7.08. Employment Rights.

Neither the establishment nor the continuance of the Welfare Plan or of any Component Plan shall be construed as conferring any legal rights upon any employee of an Employer or any other person for a continuation of employment, nor shall such establishment or continuance interfere with the right of an Employer to discharge any employee or any other person or to deal with him without regard to the existence of the Welfare Plan or any Component Plan.

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ELI LILLY AND COMPANY

EXTENDED DISABILITY PLAN

Effective August 1, 1972
As Amended Effective January 1, 2002

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SECTION 1. ESTABLISHMENT AND RESTATEMENT

1.01. The Establishment of the Plan.

Eli Lilly and Company has established, effective August 1, 1972, a plan as hereinafter set forth for providing certain extended disability benefits to its eligible employees. The plan, as stated herein and as amended from time to time, shall be known as The Lilly Extended Disability Plan.

1.02. The Lilly Employee Welfare Plan.

Effective January 1, 1986, the Plan shall be part of The Lilly Employee Welfare Plan, a program established to provide medical, dental, extended disability, life insurance, holiday, vacation, and other benefits to eligible employees of Eli Lilly and Company and their beneficiaries. The provisions of The Lilly Employee Welfare Plan are, to the extent applicable, incorporated herein by reference.

1.03. Effective Date.

The Lilly Extended Disability Plan, as herein amended and restated, shall be effective as of January 1, 1999, with respect to Employees who were eligible for Company-Provided Disability Benefit or EDL PLUS Disability Benefit payments under the Plan as of that date and with respect to those Employees who become eligible for Company-Provided Disability Benefit or EDL PLUS Disability Benefit payments under the Plan on or after that date.

SECTION 2. DEFINITIONS

2.01. Definitions.

(a) The following words and phrases as used in the Plan shall have the following meanings unless a different meaning is required by the context:

(1) Average Final Earnings. The term "Average Final Earnings" means one-twelfth (1/12) of the Employee's average annual Earnings for the five (5) calendar years in which the Employee had the greatest amount of Earnings during the last ten (10) calendar years of employment for the Company or a Qualified Subsidiary immediately preceding the date on which the Employee incurred a Disability, or one-twelfth (1/12) of the Employee's average annual Earnings for all such calendar years, if less than five (5).

(2) Company. The term "Company" means Eli Lilly and Company.

(3) Company-Provided Disability Benefit. The term "Company-Provided Disability Benefit" means one or more monthly payments made under the Plan to an Employee because of the Employee's Disability.

(4) Controlled Group. The term "Controlled Group" means a controlled group of corporations (within the meaning of Section 1563(a) of the Internal Revenue Code of 1986, as amended, determined without regard to Sections 1563(a)(4) and (e)(3)(C) of the Internal Revenue Code) of which the Company is a member.

(5) Disability. The term "Disability" means the inability of an Employee to engage, for remuneration or profit, in any occupation commensurate with the Employee's education, training, and experience, provided that the inability results from an illness or accidental bodily injury that requires the Employee to be under the regular care of a Licensed Physician. The term "Disability" shall not include an inability that is attributable to war, declared or undeclared, or any act of war; to intentionally self-inflicted injuries; or to active participation in a riot. An Employee who has been determined by the Employee Benefits Committee to have a Disability shall sometimes be described herein as being "Disabled."

(6) Disability Date. The term "Disability Date" means the later to occur of the following:

(A) the last day for which an Employee who is Disabled receives pay under any temporary illness pay or short-term disability program (other than a worker's compensation program) maintained by the Company or a Qualified Subsidiary; or

(B) the date as of which the Employee Benefits Committee makes a final determination that the Employee is Disabled.

(7) Early Retirement Benefit Equivalent. The term "Early Retirement Benefit Equivalent" means the monthly "early retirement benefit" (as defined in section 4.02 of the Retirement Plan) that a Disabled Employee is eligible to receive under the Retirement Plan,

assuming, for purposes of this paragraph (7) only, that:

(A) the Disabled Employee has retired;

(B) with respect to a Disabled Employee who does not otherwise qualify for an "early retirement benefit" under section 3.02(b) of the Retirement Plan, the sum of the age and Years of Service of the Employee equals eighty (80), and the Employee has reached the fifth (5th) anniversary of his commencement of participation in the Retirement Plan;

(C) for purposes of calculating such benefit, the assumed age and "Benefit Years of Service" (as defined in the Retirement Plan) of a Disabled Employee, as described in (B) above, will be taken into account;

(D) the retirement benefit will be received in the form of a single life annuity; and

(E) any offset for any benefits payable to the Employee under any other qualified defined benefit plan maintained by the Company or any member of the Controlled Group will be disregarded.

(8) Earnings.

(A) The term "Earnings" means:

(i) regular compensation, overtime, and other forms of additional compensation determined by and paid currently pursuant to an established formula or procedure, and

(ii) salary reduction contributions to The Lilly Employee Savings Plan or elective contributions under any similar tax-qualified plan that is intended to meet the requirements of Section 401(k) of the Internal Revenue Code, and

(iii) elective contributions to any cafeteria plan that is intended to meet the requirements of Section 125 of the Internal Revenue Code.

(B) The term "Earnings" shall not include:

(i) compensation paid in lieu of earned vacation; or

(ii) amounts contributed to the Retirement Plan or any other qualified plan, except as provided in clause (A)(ii), above; or

(iii) payments based upon the discretion of the Company, Qualified Subsidiary, or member of the Controlled Group; or

(iv) in the case of a person employed by a Qualified Subsidiary, foreign service, cost of living, or other allowances that would not be paid were the person employed by the Company; or

(v) amounts paid as commissions, sales bonuses, or Market Premiums (as defined under the Retirement Plan).

(C) Earnings during any period of leave of absence for military service shall be assumed to be at the same basic rate as earnings immediately preceding the period of leave.

(9) EDL PLUS Disability Benefit. The term "EDL PLUS Disability Benefit" means one or more monthly payments made under the Plan, because of an Employee's Disability, to an Employee who is receiving the Company-Provided Disability Benefit on account of such Disability and who has EDL PLUS coverage in effect under the terms of the Flexible Benefits Plan. An Employee under age 65 may elect EDL PLUS coverage in accordance with the Flexible Benefits Plan by electing to forego Earnings in the amount required for such coverage.

(10) Employee. The term "Employee" means a person

(A) who is employed as a common law employee by, and receives regular compensation, including temporary illness pay, from the Company or a Qualified Subsidiary, and

(B) who is ordinarily employed by the Company or a Qualified Subsidiary for 20 or more hours per week and 5 months per year, and

(C) who is not a "leased employee" within the meaning of Section 414(n) of the Internal Revenue Code, and

(D) who is not classified as a special status employee because his employment status is temporary, seasonal, or otherwise inconsistent with regular employment status, and

(E) who is accruing benefits under the Retirement Plan at the time Disability occurs, or who would be accruing benefits under the Retirement Plan if Section 415 of the Internal Revenue Code were disregarded.

Solely for purposes of the Plan, an individual who satisfied the requirements of clauses (A) through (E), above, immediately before he incurred a Disability shall be deemed to be an Employee while he is eligible to receive a Company-Provided Disability Benefit or EDL PLUS Disability Benefit under the Plan.

Notwithstanding anything herein to the contrary, the term Employee shall not include any person who is not so recorded on the payroll records of the Company or Qualified Subsidiary, as applicable, including any such person who is subsequently reclassified by a

court of law or regulatory body as a common law employee of such Company or Qualified Subsidiary. Consistent with the foregoing, and for purposes of clarification only, the term Employee does not include any individual who performs services for the Company or Qualified Subsidiary, as applicable, as an independent contractor or under any other non-employee classification. (Subsection 2.01(a)(10) is effective April 1, 2001.)

(11) Employee Benefits Committee. The term "Employee Benefits Committee" means the Committee by that name appointed by the Board of Directors of the Company for the purpose of administering the Plan or its designee.

(12) Final Pay. The term "Final Pay" means an Employee's regular monthly compensation, overtime and other forms of additional compensation determined by and paid pursuant to an established formula or procedure, determined as of the date on which the Employee incurs a Disability, including salary reduction contributions to a cafeteria plan that is intended to meet the requirements of Section 125 of the Internal Revenue Code or salary reduction contributions to a cash or deferred arrangement that is intended to meet the requirements of Section 401(k) of the Internal Revenue Code, but excluding all other amounts contributed to any tax-qualified plan by or on behalf of the Employee.

(13) Flexible Benefits Plan. The term "Flexible Benefits Plan" means The Eli Lilly and Company

Flexible Benefits Plan, as amended from time to time.

(14) Legislative Benefit. The term "Legislative Benefit" means the aggregate amount of the monthly disability income benefits available pursuant to federal, state, or municipal legislation, or pursuant to foreign legislation, as a result of an Employee's employment, regardless of whether the Employee actually receives such benefits, provided that the Employee Benefits Committee determines that the nature and severity of the Employee's Disability makes him eligible to apply for benefits pursuant to such legislation. The term "Legislative Benefit" shall include, but shall not be limited to, the following:

(A) any Social Security disability benefit, Railroad Retirement disability benefit, occupational disease benefit (other than a worker's compensation benefit), or other periodic cash disability income benefit that the Employee Benefits Committee determines is payable with respect to an Employee, or any such benefit that the Employee Benefits Committee determines would be payable with respect to an Employee if the Employee had applied for such benefit and had completed any waiting period applicable to such benefit; and

The term "Legislative Benefit" shall not include any worker's compensation benefit.

(15) Licensed Physician. The term "Licensed Physician" means a physician, other than the Employee, who is acting within the scope of his or her license. If Disability is due to a Mental Illness, Licensed Physician means a psychiatrist or licensed doctoral level psychologist other than the Employee.

(16) Life Insurance Plan. The term "Life Insurance Plan" means The Eli Lilly and Company Life Insurance and Death Benefit Plan, as adopted by the Board of Directors of the Company effective January 1, 1992, as amended from time to time.

(17) Mental Illness. The term "Mental Illness" means any disease, condition or disorder, whether organic or inorganic, customarily within the scope of treatment of psychiatrists, psychologists, psychotherapists, or counselors. This includes, but is not limited to:

(A) psychosis, psychoneurosis, anxiety, and depression; and

(B) behavioral, adjustment, emotional, personality, and stress-related disorders.

(18) Normal Retirement Age. The term "Normal Retirement Age" means Normal Retirement Age under the Retirement Plan, as defined in Section 3.02(a) of the Retirement Plan.

(19) Objective Medical Evidence. The term "Objective Medical Evidence" means "medical signs"

(including psychiatric signs) and "laboratory findings," as documented by a Licensed Physician regarding disability status.

(A) Medical signs are anatomical, physiological, or psychological abnormalities that can be observed, apart from subjective statements of symptoms. Medical signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena that indicate specific abnormalities of behavior, affect, thought, memory, orientation, and contact with reality. They must also be shown by observable facts that can be medically described and evaluated.

(B) Laboratory findings are anatomical, physiological, or psychological phenomena that can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (x-rays), and psychological tests.

(20) Plan. The term "Plan" means The Lilly Extended Disability Plan, as herein set forth and as amended from time to time.

(21) Prior Condition. The term "Prior Condition" means a sickness, injury or infirmity suffered by an Employee, on or prior to the Employee's date of employment (i) by the Company, (ii) by a

Qualified Subsidiary, or (iii) by any member of the Controlled Group. In the case of an Employee who terminates employment with the Company, a Qualified Subsidiary, or a member of the Controlled Group and is later rehired, the Employee's most recent date of employment by the Company, a Qualified Subsidiary, or a member of the Controlled Group shall be used to determine whether the Employee has a Prior Condition.

(22) Qualified Subsidiary. The term "Qualified Subsidiary" means a corporation that is either:

(A) a foreign corporation not less than 10 percent of the voting stock of which is owned directly or through one or more entities by the Company, but only if the Company has entered into an agreement under Section 3121(1) of the Internal Revenue Code or the corresponding provision of any subsequent revenue law that applies to such foreign corporation, and such agreement remains in effect; or

(B) a domestic corporation not less than 80 percent of the voting stock of which is owned by the Company, 95 percent or more of the gross income of which, for the three-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence), was derived from sources without the United States, and 90 percent or more of the gross

income of which for such period (or such part) was derived from the active conduct of a trade or business.

(23) Recurrent Disability. The term "Recurrent Disability" means a Disability that is related to a prior Disability for which an Employee received a Company-Provided Disability Benefit or an EDL PLUS Disability Benefit.

(24) Rehabilitative Employment. The term "Rehabilitative Employment" means work in any gainful occupation, other than an Employee's regular occupation, for which the Employee is reasonably fitted by training, education, or experience, provided that such Rehabilitative Employment is performed during a period in which the Employee is unable fully to perform his regular occupation. The term "Rehabilitative Employment" also includes work in an Employee's regular occupation on a work schedule that is substantially reduced from the schedule that the Employee followed immediately before he incurred a Disability.

(25) Rehabilitative Employment Period. The term "Rehabilitative Employment Period" means the period that begins on the date on which the Employee accepts Rehabilitative Employment, and that ends on the earliest of the following dates:

(A) the date specified in paragraph (b), (c), or (d) of subsection 4.02, below; or

(B) the date on which the Employee ceases to engage in Rehabilitative Employment, provided that the Employee is not Disabled on the date on which he ceases to engage in Rehabilitative Employment.

(26) Retirement Plan. The term "Retirement Plan" means The Lilly Retirement Plan, as adopted by the Board of Directors of the Company effective January 1, 1944, as amended from time to time.

(27) Trust. The term "Trust" means the Eli Lilly and Company Master Trust for Employee Benefits, as amended from time to time. The agreement establishing the Trust is hereby incorporated by reference into, and made a part of, the Plan, except to the extent that it expressly conflicts with the terms of this Plan.

(28) Trustee. The term "Trustee" means the trustee of the Eli Lilly and Company Master Trust for Employee Benefits.

(29) Welfare Plan. The term "Welfare Plan" means The Lilly Employee Welfare Plan, as amended from time to time. The provisions of the Welfare Plan, including those governing administration, review of claims, amendment and miscellaneous matters, are hereby incorporated by reference into, and made a part of, this Plan, except to the extent that they expressly conflict with the terms of this Plan.

(30) Year of Service. The term "Year of Service" means a year of service as defined in The Retirement Plan.

(b) Gender. Masculine pronouns shall refer both to males and to females.

SECTION 3. ELIGIBILITY

3.01. Eligibility for Company-Provided Disability Benefit.

(a) An eligible Employee whose active employment terminates because of Disability shall be entitled to receive a Company-Provided Disability Benefit under the terms of the Plan as in effect on his Disability Date.

(b) An Employee shall not be entitled to receive a Company-Provided Disability Benefit if his employment terminates because of Disability while he is on a paid or unpaid leave of absence, unless such Disability occurs on or before the end of the month immediately following the month in which the leave of absence begins.

(c) An Employee shall not be entitled to receive a Company-Provided Disability Benefit if the Disability is attributable to a Prior Condition, unless such Disability occurs after such Employee has completed at least five (5) Years of Service following his most recent date of employment by the Company, a Qualified Subsidiary, or any member of the Controlled Group.

3.02. Eligibility for EDL PLUS Disability Benefit.

(a) An eligible Employee whose active employment terminates because of Disability shall be entitled to receive an EDL PLUS Disability Benefit under the terms of the Plan as in effect on his Disability Date, provided that the Employee is entitled to the Company-Provided Disability Benefit on account of such Disability, and the Disability Date occurs on a date when the Employee has EDL PLUS

coverage in effect under the terms of the Flexible Benefits Plan.

(b) An Employee shall not be entitled to receive an EDL PLUS Disability Benefit if his employment terminates because of Disability while he is on a paid or unpaid leave of absence, unless such Disability occurs on or before the end of the month immediately following the month in which the leave of absence begins.

(c) If an Employee:

(1) did not elect EDL PLUS coverage within the period the Employee was first eligible to do so under the terms of the Flexible Benefits Plan, or

(2) elected under the terms of the Flexible Benefits Plan to end a prior period of EDL PLUS coverage, and

the Employee subsequently elects or re-elects, as applicable, EDL PLUS coverage, then such Employee shall not be entitled to receive an EDL PLUS Disability Benefit for a Disability that is attributable to an illness or injury that was diagnosed or treated during the twelve (12) month period immediately prior to the date of the Employee's subsequent election of EDL Coverage, unless such Disability occurs at least twenty-four (24) months after the date of such subsequent election.

3.03. Termination and Reinstatement of Eligibility.

(a) An Employee's eligibility to participate in the Plan shall terminate on the earlier of (i) the date on which he ceases

to be an Employee, or (ii) the date on which the Plan terminates.

(b) If an individual's eligibility to participate in the Plan terminates because he has ceased to be an Employee, he shall be eligible to resume his participation in the Plan as of the date on which he again meets the definition of an Employee in clauses (B) through (F) of subsection 2.01(a)(11) of the Plan.

3.04. Recurrent Disability.

(a) This subsection 3.04 shall apply only to an individual who is employed by the Company and who qualifies as an Employee following a period of Disability; it shall not be deemed to create any rights in any individual who suffers a Recurrent Disability while such individual is not employed by the Company or a Qualified Subsidiary as an Employee. This subsection 3.04 shall not apply to an individual who is unable to return to his regular occupation at the Company and to follow his regular work schedule as described in paragraph (b)(1), below, but who is employed by the Company in Rehabilitative Employment.

(b) An Employee's Recurrent Disability shall be treated as a new period of Disability for all purposes under the Plan if, immediately following the termination of his period of Disability, the Employee

(1) returned to his regular occupation at the Company or a Qualified Subsidiary (or to an occupation at the Company or a Qualified Subsidiary that requires similar skills, training, and experience) on the work schedule that he followed immediately before he incurred a Disability, and

(2) performed all of the material duties of his occupation, and

(3) worked continuously in his occupation for at least three months before he incurred a Recurrent Disability.

(c) If an Employee returns to employment with the Company or a Qualified Subsidiary but fails to meet one or more of the requirements of paragraph (b), above, the Employee's Recurrent Disability shall be treated as part of the Employee's prior Disability. A Recurrent Disability that is treated as part of an Employee's prior Disability pursuant to this paragraph (c) shall be subject to the following rules:

(1) The Employee's Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit, as applicable, shall recommence as of the first day of the month following the month in which his active employment terminates because of the Recurrent Disability, and

(2) The amount of the Employee's Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit shall be the same as the amount of the Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit, as applicable, that he

received during his prior Disability (subject, however, to adjustment to reflect any differences in the compensation that the Employee receives or formerly received for Rehabilitative Employment).

3.05. Rehabilitative Employment.

If an Employee accepts Rehabilitative Employment while he is receiving a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit under the Plan, the Employee shall remain eligible to receive a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit, as applicable, under the Plan to the extent provided in Section 4, below, and the amount and duration of the Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit payable with respect to such Employee shall be adjusted as provided in Section 4, below.

SECTION 4. DURATION AND AMOUNT OF COMPANY-PROVIDED DISABILITY BENEFIT AND EDL PLUS DISABILITY BENEFIT

4.01. Commencement of Company-Provided Disability Benefit or EDL PLUS Disability Benefit.

Payment of an Employee's Company-Provided Disability Benefit or EDL PLUS Disability Benefit, as applicable, shall commence as of the first day of the month immediately following the month in which such Employee's Disability Date occurs.

4.02. Duration of Company-Provided Disability Benefit or EDL PLUS Disability Benefit: Generally.

Except as otherwise provided in subsection 4.03(b) or subsection 4.04, below, Company-Provided Disability Benefit payments or EDL PLUS Disability Benefit payments, as applicable, shall cease as of the last day of the month during which the earliest of the following events occurs:

(a) the Employee is no longer Disabled;

(b) the Employee dies;

(c) if the Employee was age 60 or less on the Disability Date, the Employee reaches age 65; or

(d) if the Employee was over age 60 on the Disability Date, 5 years have elapsed since the Disability Date.

4.03. Duration of Company-Provided Disability Benefit and EDL PLUS Disability Benefit: Rehabilitative Employment.

(a) Except to the extent provided in subsection 4.03(b), below, an Employee who becomes able to engage, for remuneration or profit, in any occupation commensurate with such Employee's education, training, and experience shall cease to be Disabled for purposes of the Plan, regardless of whether the Employee actually engages in such an occupation.

(b) If an Employee accepts Rehabilitative Employment after he qualifies for a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit, as applicable, and before such Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit terminates, he shall continue to be treated as a Disabled Employee for all purposes of the Plan during the Rehabilitative Employment Period. The Employee's Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit during the Rehabilitative Employment Period shall be reduced as described in subsection 4.06, below.

(c) If an Employee accepts Rehabilitative Employment and then terminates such Rehabilitative Employment because the Employee has become Disabled again, and if the termination of such Rehabilitative Employment occurs before the expiration of the Rehabilitative Employment Period, the Rehabilitative Employment Period shall be treated as a continuation of such Employee's prior Disability for purposes of computing the amount and duration of the Employee's Company-Provided Disability

Benefit and/or EDL PLUS Disability Benefit, as applicable.

4.04. Duration of Company-Provided Disability Benefit and EDL PLUS Disability Benefit: No Objective Medical Evidence.

Notwithstanding any other provisions of this Plan, Company-Provided Disability Benefit and EDL PLUS Disability Benefit payments will be provided for a maximum period of 24 months for any illness or bodily injury that is not susceptible to proof by Objective Medical Evidence documented by a Licensed Physician.

4.05. Amount of Company-Provided Disability Benefit and EDL PLUS Disability Benefit.

(a) If the Disability Date occurs prior to the Employee's attainment of Normal Retirement Age under the Retirement Plan and prior to the Employee's voluntary election to receive a retirement benefit under the Retirement Plan, the Company-Provided Disability Benefit shall be equal to the greater of:

(1) the Early Retirement Benefit Equivalent, or

(2) 50 percent of the Employee's Average Final Earnings, less the Legislative Benefit; provided that, if the amount of the Company-Provided Disability Benefit is determined pursuant to this paragraph (a), the amount of the Company-Provided Disability Benefit shall be

redetermined pursuant to paragraph (b), below, of this subsection 4.05 upon the Employee's attainment of Normal Retirement Age under the Retirement Plan, or pursuant to paragraph (c), below, of this subsection 4.05 upon the Employee's voluntary election to receive a retirement benefit under the Retirement Plan.

(b) If the Disability Date occurs after the Employee's attainment of Normal Retirement Age under the Retirement Plan, the amount of the Company-Provided Disability Benefit shall be equal to the greater of:

(1) the Early Retirement Benefit Equivalent, or

(2) 50 percent of the Employee's Average Final Earnings, less the Legislative Benefit;

less any monthly "normal retirement benefit" (as defined in section 4.01 of the Retirement Plan) such Employee is eligible to receive under the Retirement Plan, assuming, for purposes of this paragraph 4.05(b) only, that the "normal retirement benefit" will be received in the form of a "joint and survivor annuity" (as described in section 5.01(b) of the Retirement Plan).

(c) If the Disability Date occurs after the Employee's voluntary election to receive a retirement benefit under the Retirement Plan, the amount of the Company-Provided Disability Benefit shall be equal to the greater of:

(1) the Early Retirement Benefit Equivalent, or

(2) 50 percent of the Employee's Average Final Earnings, less the Legislative Benefit; less any monthly retirement

benefit such Employee is receiving under the Retirement Plan.

(d) If the Disability Date occurs on a date when an Employee has EDL PLUS coverage in effect under the terms of the Flexible Benefits Plan and the Employee is entitled to Company-Provided Disability Benefit for the Disability, he shall be entitled to an EDL PLUS Disability Benefit of 15 percent of his Average Final Earnings.

(e) Notwithstanding any provision in paragraph (a), (b), (c), or (d) above,

(1) the Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit, as applicable, of any Employee receiving a worker's compensation benefit, shall be reduced by the amount of such worker's compensation benefit; and

(2) the Company-Provided Disability Benefit calculated under subparagraphs 4.05(a)(2), 4.05(b)(2), or 4.05(c)(2) shall be redetermined pursuant to subparagraph 4.05(a)(1), 4.05(b)(1), or 4.05(c)(1), above, on the tenth anniversary of the Disability Date, provided that

(A) if the Disability Date is on or before December 31, 1998, the Company-Provided Disability Benefit shall not be so redetermined until the Employee's attainment of age 55 and thereafter; and

(B) if the Disability Date occurs between January 1, 1999, and December 31, 2000, the amount

of the Company-Provided Disability Benefit shall not be so redetermined until the later of (i) the tenth anniversary of the Disability Date, or (ii) the Employee's attainment of age 55, and thereafter.

4.06. Adjustment for Rehabilitative Employment.

If an Employee receives compensation for Rehabilitative Employment while he is receiving a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit, as applicable, the amount of the Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit shall be reduced so that the sum of the Employee's Company-Provided Disability Benefit, the EDL PLUS Disability Benefit, the Legislative Benefit, and compensation for Rehabilitative Employment does not exceed 100 percent of the Employee's Final Pay.

4.07. Limitation on Amount of Benefit.

At such times as the sum of the Company-Provided Disability Benefit, the EDL PLUS Disability Benefit, the Legislative Benefit, and post-disability earnings of the Employee exceeds 100 percent of such Employee's Final Pay, the amount of the Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit determined under subsection 4.05 shall be reduced by the amount by which the sum of the Company-Provided Disability Benefit, the EDL PLUS Disability Benefit, the Legislative Benefit, and any post-disability earnings of the Employee exceeds 100 percent of such Employee's Final Pay.

SECTION 5. DEATH BENEFIT

5.01. Eligibility For Death Benefit.

A Disabled Employee's "uninsured coverage" under the Life Insurance Plan shall be discontinued upon the earliest of the following to occur:

(a) the fifth anniversary of the Disabled Employee's Disability Date;
(b) effective on and after January 1, 2000, the date upon which the sum of the Disabled Employee's age and Years of Service equals 80, as determined pursuant to the provisions of the Retirement Plan then in effect (but such date shall be deemed to be January 1, 2000 if the Disabled Employee's age and Years of Service equal or exceed 80 as of December 31, 1999); or
(c) when the Disabled Employee ceases to be an Employee. A Disabled Employee shall become eligible for the death benefit described in subsections 5.02 and 5.03, below, effective as of the date on which his coverage under the Life Insurance Plan is discontinued.

5.02. Designation of Beneficiary.

The death benefit shall be payable in a lump sum to the beneficiary of any deceased Employee whose coverage under the Life Insurance Plan had been discontinued pursuant to subsection 5.01, above, and who was receiving a Company-Provided Disability Benefit at the time of death. The death benefit shall be paid to the beneficiary or beneficiaries named by the Employee under the Life Insurance Plan at the time coverage under the Life Insurance Plan was discontinued, unless the Employee filed written notice with

the Employee Benefits Committee designating a different beneficiary.

5.03. Amount of Death Benefit.

The amount of the death benefit shall be $5,000.

SECTION 6. CLAIMS

6.01. Time Requirements for Claims.

(a) Notice of Claim. An Employee who intends to file a claim for a Company-Provided Disability Benefit or EDL PLUS Disability Benefit must notify the Employee Benefits Committee in writing within 30 days from the date on which the Disability commences.

(b) Proof of Claim. An Employee must provide the Employee Benefits Committee with proof of the Employee's entitlement to a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit (including any available Objective Medical Evidence) within 90 days after the expiration of the 30-day period described in paragraph (a), above.

(c) Extension of Time. The Employee Benefits Committee may accept a notice of the Employee's claim, or proof of the Employee's claim (including Objective Medical Evidence), after the expiration of the applicable period described in paragraph (a) or (b), above, provided that the Employee

(1) shows good cause for his delay in submitting the required notice or proof, and

(2) submits the required notice or proof as soon as he is reasonably able to do so.

In no event, however, may the Employee Benefits Committee accept a notice of the Employee's claim or proof of the Employee's claim (including Objective Medical Evidence) more than one year after the expiration of the applicable period described in paragraph (a) or (b), above.

6.02. Proof of Claims.

(a) An Employee who claims to be entitled to a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit shall submit to the Employee Benefits Committee, at the Employee's own expense, the following information:

(1) the date on which the Employee's Disability commenced;

(2) the cause of the Disability;

(3) any available Objective Medical Evidence of the Disability;

(4) the nature and extent of the Disability;

(5) the name and address of the Licensed Physician who is providing the Employee with regular care; and

(6) such other information as the Employee Benefits Committee shall reasonably require in order to determine whether the Employee is eligible for a

Company-Provided Disability Benefit or EDL PLUS Disability Benefit.

Failure to provide the information specified in this paragraph (a) shall result in the denial of an Employee's claim for Company-Provided Disability Benefit or EDL PLUS Disability Benefit payments, as applicable.

(b) The Employee Benefits Committee may require an Employee to undergo examination by a Licensed Physician or vocational expert chosen by the Employee Benefits Committee to determine the extent of any illness or injury for which the Employee makes a claim under the Plan. The Employee Benefits Committee may require an Employee to undergo such examinations as often as is reasonably necessary to determine whether the Employee remains Disabled. The Trustee shall pay out of the Trust the expense of any examination required by the Employee Benefits Committee pursuant to this paragraph (b); provided that if the Company or a Qualified Subsidiary notifies the Trustee that the Company or such Qualified Subsidiary has paid or will pay any expense described in this sentence, the Trustee shall not pay such expense out of the Trust.

6.03. Approval of Claims.

(a) The Employee Benefits Committee shall have the discretion to construe the terms of the Plan and to determine whether an Employee has incurred a Disability, whether the Employee has submitted Objective Medical Evidence, the amount of the Employee's Average Final Earnings, the amount of the Employee's Final Pay, whether the Employee is eligible to receive any

Legislative Benefit, the amount of any Legislative Benefit that the Employee is eligible to receive, and any other matter concerning an Employee's eligibility for benefits under the Plan.

(b) The Employee Benefits Committee shall have the discretion to make any finding of fact necessary for the determination of any benefit payable under the Plan. The Employee Benefits Committee may review its prior determination from time to time to ascertain whether there has been any change in the facts or conditions on which the determination was based.

6.04. Inability To Locate Employee.

The Employee Benefits Committee will make reasonable efforts to locate any Employee who has established an entitlement to receive a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit, as applicable. If, despite these efforts, the Employee Benefits Committee fails to locate an Employee, the following rules shall apply:

(a) If the Employee is located by the Employee Benefits Committee within six months after the date on which he last received a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit, as applicable, and if he can demonstrate that he continues to have a Disability, the Company shall restore the Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit that the Employee would have received during the period from the date on which he last received a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit until the time he was located by the Employee Benefits Committee;

(b) If the Employee is located by the Employee Benefits Committee more than six months after the date on which he last received a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit, as applicable, and if he can demonstrate that he continues to have a Disability, the Company shall restore the Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit that the Employee would have received during the period from the date on which he last received a Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit until six months after such date.

In either of the cases described in paragraphs (a) and (b), above, the Employee's Company-Provided Disability Benefit and/or EDL PLUS Disability Benefit, as applicable, shall recommence as of the first day of the month following the date on which he was located by the Employee Benefits Committee.

6.05. Claims Procedure.

(a) Initial Claims. If a claim for disability benefits is wholly or partially denied, the Employee Benefits Committee (or its delegate) shall give the claimant notice of its adverse benefit determination within a reasonable time, but not later than 45 days after receipt of the claim. This determination period may be extended twice by 30 days if, prior to the expiration of the initial 45-day period, the Employee Benefits Committee (or its delegate) determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the claimant of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If an extension is necessary, the notice of extension shall

specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues. The claimant will be afforded at least 45 days within which to provide the specified information.

The notice of an adverse benefit determination shall be written in a manner calculated to be understood by the claimant and shall set forth the following:

(1) the specific reason(s) for the adverse benefit determination;
(2) reference to the specific plan provisions on which the determination is based;
(3) a description of additional material or information, if any, needed to perfect the claim and the reasons such material or information is necessary;
(4) a description of the Plan's claims review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of ERISA following an adverse benefit determination on review;
(5) any internal rule, guideline, or protocol relied on in making the adverse determination (or state that such information is available free of charge upon request); and
(6) when the claim is denied based on a medical necessity or an experimental treatment exclusion, an explanation of the scientific or clinical basis of the determination (or state that such information is available free of charge upon request).

(b) Appeal of Adverse Benefit Determinations. The claimant shall have 180 days from the receipt of an adverse benefit determination to file an appeal. Requests for appeals should be sent to the address specified in the adverse benefit determination. A final decision on review will be made within a reasonable period of time, but not later than 45 days following the Plan's receipt of the written request for review. If the Employee Benefits Committee (or its delegate) determines that special circumstances require an extension of time for a final decision on review, the review period may be extended by an additional 45 days (90 days in total). The Employee Benefits Committee (or its delegate) will notify the claimant of the extension prior to the expiration of the first 45-day period and shall identify the special circumstances requiring the extension and the date by which the Plan expects to render the determination on review.

The Employee Benefits Committee (or its delegate) shall issue a decision, which shall be written in a manner calculated to be understood by the claimant and shall set forth the following:

(1) the specific reason(s) for the adverse determination;

(2) reference to the specific provisions of the Plan on which the benefit determination is based;

(3) a statement that the claimant is entitled to receive, free of charge, reasonable access to and copies of all documents relevant to the claim (within the meaning of Lab. Reg. § 2560.503-1(m)(8));

(4) a statement describing any voluntary appeal procedures offered by the Plan;

(5) a statement of the claimant's right to bring an action under section 502(a) of ERISA;

(6) any internal rule, guideline, or protocol relied on in making the adverse determination (or state that such information is available free of charge upon request);

(7) when claim is denied based on medical necessity or an experimental treatment exclusion, an explanation of the scientific or clinical basis of the determination (or state that such information is available free of charge upon request); and

(8) the statement specified in Lab. Reg. § 2560.503-1(j)(5)(iii)).

Claimants will have the opportunity to submit written comments, documents, or other information in support of their appeals. Claimants will have access to all relevant documents (within the meaning of Lab. Reg. § 2560.503-1(m)(8)) and may request the identification of any medical or vocational expert whose advice was obtained on behalf of the Plan in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination. The review of the adverse benefit determination will take into account all new information, whether or not presented or available at the initial determination. No deference will be afforded to the initial determination.

The review will be conducted by the Employee Benefits Committee (or its delegate) and will be made by a person different from the person who made the initial determination and such person will not be the original decisionmaker's subordinate. In the case of a claim denied on the grounds of medical necessity or experimental treatment, the Employee Benefits Committee (or its delegate) will consult with a health professional with appropriate training. The health care professional who is consulted on appeal will not be the individual who was consulted during the initial determination or his subordinate, if applicable.

(c) Effective Date. This subsection 6.05 shall be effective for all claims filed under the Plan on or after January 1, 2002.

No. 04-1367

In The
Supreme Court of the United States

KENIA MARITZA CINTRÓN PARRILLA, ET AL,

Pro Se Petitioners,

v.

ELI LILLY INDUSTRIES, INC., ET AL,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

KENIA M. CINTRÓN PARRILLA
MIGUEL A. GARCÍA MÉNDEZ
(Pro se)
P. O. Box 388
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Telephone: 787-874-1359

QUESTIONS PRESENTED

1. Should the judgment and ruling of the court be inferred or it should be clearly stated beyond reasonable doubt?

2. Whether the time for an appeal starts to run when an order that finally rules on a motion requesting ruling for reconsideration is filed.

3. Should a motion requesting ruling for reconsideration under Federal Rules of Civil Procedure Rule 59(e) be defined or considered as a second motion for reconsideration?

4. Whether the Plan administrator under its authority may construe and interpret the term and conditions of the Plan and the Settlement Agreement at its convenience when the Agreement already construe all the terms condition and procedures that will govern the process?

5. Whether the terms, condition, and procedures under the Agreement preempt the terms, condition and procedures under the Plan?

6. Is there a conflict of interest when a person involved in the initial determination of the initial determination is also involved in the appeal determination?

7. Should the court interfere with the Plan Administrator's decision when it did not follow its own Plan's procedure, there is a conflict of interest and/or the decision to deny a disability claim lack of substantial evidence in the record to sustain such decision?

PARTIES

As per stated in the Second Amended Complaint filed on August 2, 2001, the parties are as follows (District Court Docket Document Number 42):

1. Kenia M. Cintrón Parrilla ("Mrs. Cintrón"), worked as an employee for Eli Lilly del Caribe, Inc., (before named Eli Lilly Industries, Inc.), Puerto Rico Branch, a subsidiary of Eli Lilly Industries, Inc. ("Lilly" or "Eli Lilly"), for approximately 20 years, as a chemist and senior quality assurance representative. As a Lilly employee Mrs. Cintrón is a participant in all of Lilly's E.R.I.S.A. plans and is entitled to the other employee benefits.

   Plaintiff-Petitioner

2. Miguel A. García Mendez ("Mr. García") is the husband of Kenia M. Cintrón Parrilla, and together they form a legal conjugal partnership.

   Plaintiff-Petitioner

3. Eli Lilly Industries, Inc. Health, and Welfare and Disability Plan, and/or Eli Lilly Puerto Rico Extended Disability Plan (the "Lilly Plan"), is an employee welfare benefit plan, and those terms are defined in Section 3 (1) and (3) of E.R.I.S.A., 29 U.S.C. sec. 1002 (1) and (3), and thus subject to the provisions of E.R.I.S.A., 29 U.S.C. §§ 1001 et seq. The Lilly Plan covers employees and former employees of Eli Lilly Industries, Inc. and/or Eli Lilly del Caribe, Inc., Puerto Rico Branch, and hence it covers the Plaintiff-Petitioner Kenia M. Cintrón Parrilla.

   Defendant-Respondent

4. Eli Lilly del Caribe, Inc. and/or Eli Lilly Industries, Inc., ("Lilly" or "Eli Lilly"), is a private corporation doing business in Puerto Rico, with its main business office

located in Carolina, Puerto Rico, and it is the administrator and/or fiduciary or trustee of the Lilly Plan for its Employees or former employees in Puerto Rico.

Defendant-Respondent

5. Company X is the health, welfare and disability plan of the Eli Lilly employees.

   Defendant-Respondent

6. Company Y is the administrator and/or fiduciary or trustee of the health, welfare and disability plan of the Eli Lilly employees, which is either natural or juridical person.

   Defendant-Respondent

7. Company A is the Eli Lilly Puerto Rico Employees Welfare Plan.

   Defendant-Respondent

8. Company B is the administrator and/or fiduciary or trustee of the Eli Lilly Puerto Rico Employee Welfare Plan.

   Defendant-Respondent

9. Company C is the Retirement Plan of Eli Lilly Industries Inc. and/or Eli Lilly del Caribe, Inc.

   Defendant-Respondent

10. Company D is the administrator and fiduciary or trustee of the Retirement Plan of Eli Lilly Industries, Inc., and/or Lilly del Caribe, Inc.

    Defendant-Respondent

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STATEMENT OF THE CASE

For Statement of the Case refer the Petition for Writ of Certiorari ("Petition"), pages 4 to 21.

A. Reply To Respondents' Statement of the Case

Respondents' Brief in Opposition ("Opposition"), state incorrect and misleading information as explained herein. Respondents state that the Committee requested Mrs. Cintrón to undergo to independent medical evaluations ("IME's") to assist the Committee to complete its evaluation of her claim and, after her initial agreement to complete the evaluations, she failed to comply with the requests.

The letters that suggested the IME's were unclear and confused: 1) did not state which "Committee within Lilly" suggested the IME's, the Puerto Rico Committee, or the Eli Lilly and Company Employee Benefits Review Committee ("Review Committee") in Indianapolis; 2) it was required that the IME's needed to be rendered directly to Dr. Felix Matos[1] (Dr. Matos) of Lilly del Caribe[2]"; 3) the IME's were suggested, desirable, helpful not a requirement; and 4) the letters that referred to each other contained contradictory information. See Petition, App. 328, 332, 458, 459.

Also, Mrs. Cintrón's was limited to exercise one of two options: to submit to IME's, or to leave the matter to be decided based solely on the information submitted by her. Respondents never clarified Mrs. Cintrón's doubts such as: 1) why reports had to be rendered to Dr. Matos; 2) if the IME's were a requirement or not; 3) why the Review

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[1] In-house physician for Lilly del Caribe in Puerto Rico

[2] Lilly del Caribe a Liliy Corporation doing business in Puerto Rico. See, this Reply, App 11, Answers And Specific Objections, item 1; and Petition, App. 104, Uncontested Facts, item A. 4.

Committee was not following the procedure under the Eli Lilly Extended Disability Plan ("Plan") the and Agreement.[3]

The better example of Respondents behavior was on November 4, 2002, when Mrs. Cintrón's attorney contacted Respondents' attorney "inquiring whether her submitting to an IME is mandatory" and the response was "I had addressed the issue in prior correspondence..." See Petition, App. 460.

Then, Mrs. Cintrón was force to choose between the two options and she opted to allow her claim to be decided with all the information she already submitted because, it was the only option that allowed her to protect her rights under the Agreement and the Plan. Mrs. Cintrón was always willing to cooperate in compliance with the Agreement and the Plan.

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[3] The alleged procedure in which Dr. Matos might be involved is before a claim is submitted to the Review Committee, as follows: "In general terms the procedure that Lilly follows to evaluate disability claims is as follows. Employees who are absent from work due to illness/injury are evaluated by the Puerto Rico Employee Health Service's Department at least once a month. During said visits pertinent information and data is obtained. Laboratory exams and/or second opinions by other physicians may be requested, if necessary. Once the Puerto Rico Employee Health Service's Department physician evaluates all information and submits his/her recommendation of disability, the case is submitted to the Employee Benefits Committee in the United States for extended disability benefits consideration." See Petition, App. 97 and this Reply, App. 13-14, item 19. But, this is not the procedure under the Plan and the Agreement.

Pursuant to the Agreement, page 7, and footnote 4, and the Plan, Mrs. Cintrón would submit her disability claim and documentation directly to the "Review Committee" to the attention of Mr. John J. Purcell in Indianapolis, for its review and further determination, not to Dr. Matos.

One of most important reasons that led the parties to agree to submit the disability claim to Indianapolis and to assign Mr. John J. Purcell as a contact person was the improper handling of Mrs. Cintron disability case by Dr. Matos.

Respondents also state that Mrs. Cintrón appealed the denial and again failed to complete an IME, as requested. This information is false. Mrs. Cintrón clearly informed to the Eli Lilly and Company Benefit Plan Appeal Committee ("Appeal Committee") that she will undergo to medical examinations: 1) July 16: "Kenia will only undergo to medical examinations as per required and stated under section 6.02(b) of the Plan."; 2) August 22: "Kenia will still able to undergo to medical evaluation only as stated under section 6.02(b) of the Plan and signed by the parties in the Settlement Agreement."; 3) August 25: "...Kenia has never refused to undergo to medical evaluations as stated in section 6.02(b) of the Plan and signed by the parties in the Agreement. Kenia still willing to undergo to medical evaluations as stated on sections 6.02(b) and 6.05(b) of the Plan and signed by the parties in the Agreement." See Petition, App. 423, 428, 435.

Section 6.02(b) of the Plan states that the physician is "chosen by the Employees Benefits Committee"[4] (emphasis added). See Opposition, 52a. The Appeal Committee never arranged any medical evaluations for Mrs. Cintrón.

CERTIORARI SHOULD BE GRANTED

A. Reply To Standard For Granting Certiorari

Respondents state that "Petitioners have not presented any compelling reasons for this Honorable Court to exercise its discretionary jurisdiction over their attempted appeal of the dismissal of their claims."

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[4] Petitioners proposed to have a physician chosen by both parties and/or the court at the time to sign the Agreement in the event of a discrepancy. Respondents refused alleging that this proposal was not stated in the Plan.

When the Honorable District Court denied Petitioners Request for Review and Petition for Oral Argument ("Request for Review") and finally ruled on the Reconsideration under Rule 59(e) on February 25, 2004, stated the reasons to deny the Request for Review referring to the whole record and to Respondents' Opposition to Request for Review. By this meaning, the District Court granted to Respondents to violate Petitioners civil rights under the U.S. Constitution, ERISA and Respondents breach of agreement, as explained herein. The Honorable Court of Appeals did the same, as well, when dismissed Petitioners' appeal and affirmed the Honorable District Court Orders under Fed. R. App. P. Local Rule 27(a), without even gave to Petitioners the opportunity to file a Brief on the Merits.

B. The First Circuit Erred When Determine That Petitioners' Appeal Orders Was Untimely

The August 14, 2002 Judgment and July 1, 2004 Order were disposed with the opportunity to be revisited. The final and conclusive order disposing them was the February 25, 2004 Order, according to Fed. R. Civil P. Rule 54(b).

Respondents also state: "After all "[a second] motion for reconsideration that is served more than ten days after the entry of the judgment has not effect upon the appeal time, which runs from the entry of the original order denying ... an alteration or amendment of the judgment" Acevedo-Villalobos, 22 F.3d at 389..." pursuant to Petitioners' Motion Requesting Our Motion for Reconsideration to be Denied or Granted ("Request of Ruling") for the December 19, 2003 Order, which did not have ruling. See Opposition, pages 6, 7.

In an intention to induce this Honorable Court to error, Respondents state the Request of Ruling filing date as January 8, when the correct filing date was January 7, 2004.

See District Docket #99 and Petition, App. 567. According to Fed. R. App. P. Rule 26(a) and Rule 4(a)4(a), it was filed within the ten (10) days period required.[5] Consequently, the First Circuit had jurisdiction and erroneously concluded that Petitioners were bared from seeking relief in connection with the November 24 and December 19, 2003 Orders.

C. The First Circuit Erred When Determined That The District Court Did Not Abuse Its Discretion in Denying Orders Timely Appealed

Respondents state: "The First Circuit has discretion to deny an appeal when it "clear appear[s] that no substantial question is presented", which would required it to consider the appeal." Petitioners presented substantial questions to the Honorable First Circuit. See Petition, App.495-505, 524-541.

Respondents also state that the District Court denied Petitioners Rule 59(e) motion to reconsider on December 19, 2003 stating that the case docket reflects that the court "terminated" the Motion for Reconsideration. The question here is, if a ruling should be inferred or should be stated beyond reasonable doubt and in the event of any doubt, if a ruling can be requested according to Fed. R Civil P. Rule 58(d) and Rule 60.

In this case the: 1) the Request for Review was denied without any explanation; 2) the Reconsideration under Rule

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[5] According to Fed. R. App. P. Rule 26(a) the 10 day period to file the motion for Request of Ruling for the December 19, 2003 Order is computed as follows: December 19 is excluded, Fed. R. App. P. Rule 26(a)(1). December 20, 21, 25, 27, 28 and January 1, 3, 4, and 6 are Saturdays, Sundays and Legal Holidays, thus are excluded, Fed. R. App. P. Rule 26(a)(2). Therefore, the 10 days included are: December 22, 23, 24, 26, 29, 30, 31, and January 2, 5 and 7, Fed. R. App. P. Rule 26(a)(3). Thus, the January 7, 2003 motion was timely filed.

59(e) was filed without knowing the reasons for the denial; 3) the Reconsideration has two petitions to be addressed, to inform the reasons for the denial of the Request for Review and to reconsider the denial; 4) the December 19, 2003 Order addressed only one of the petitions. Thus, no judgment and/or ruling were made for the Reconsideration under Rule 59(e), 5) due to lack of ruling the Request of Ruling was timely filed on January 7, 2004. See Petition App. 8, 9, 464-481.

D. On the Merits, the First Circuit Erred When It Upheld Petitioners Extended Disability Claim Denial

Respondents allege that a list of physicians was provided to Mrs. Cintrón to provide flexibility to choose the physicians most convenient for her and the one she preferred. No relevant information about the physicians was given to Mrs. Cintrón to make an intelligent selection. The major situation here is that the Review and Appeal Committees did not follow the procedure under the Plan and the Agreement and intentionally changed and delayed the process to force Mrs. Cintrón to select physicians whom were unknown to her.

When Mrs. Cintrón became disabled she had one of her worst experiences when Dr. Matos referred her to a physiatrist, Dr. Marcos U. Ramos[6]; who reported false information and implied that Mrs. Cintrón was faking her disabling conditions. See this Reply, App.20-38. This awful experience led Petitioners to make the proposal stated in this Reply, footnote 4, page 3.

This insistence to force Mrs. Cintrón to select physicians had only one intention, to bind her to any decision and/or

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[6] Petitioners filed a law suit against Dr. Marcos U. Ramos in the Puerto Rico Court; he was never found nor his alleged office could never be identified as such when the summons was tried to be served

opinion made by such physicians. Mrs. Cintrón decided to follow the Plan and the Agreement as written in order to protect her rights.

Respondents state that Mrs. Cintrón was informed of the Review Committee's decision on December 2, 2002[7], this is false. The letter was received by Mrs. Cintrón on December 10, 2002 and postmarked on December 6, 2002[8], after the deadline to render a decision had expired, pursuant to Section 6.05 of the Plan and the Agreement. See Opposition, page 54a, and Petition, Appendix AY, page 9, (Filed Under Seal).

Respondents also state that Mrs. Cintrón did not provide new information to the Appeal Committee. That is also false. On May 29, 2003, Mrs. Cintrón submitted new evidence of physicians whom had evaluated her to the Appeal Committee that was not previously submitted to the Review Committee such as: Neurological Reports by Dr. Tomás Hernández; Thoracic Surgery Evaluation by Dr. Elizardo Matos; Hand Surgery Evaluation by Dr. Jan Pierre Zegarra; Comprehensive Spine Consultation by Dr. Paul Zak; Social Security Administration Notice, dated Apr. 25, 2003. See Petition, App. 363-414.

Respondents state that on July 16, Mrs. Cintrón did not agree to attend IME's, this is also false. As herein explained, the Appeal Committee did not arrange any the medical evaluation for Mrs. Cintrón and intentionally delayed and changed the process in an effort to force her to amend the Agreement with the only intention to cover their failure to comply with the Plan and the Agreement.

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[7] Respondents arbitrarily established the December 2, 2002 date as the deadline to inform Mrs. Cintrón of the Review Committee final decision but the correct deadline date was November 29, 2002.

[8] See Petition, Appendix AZ, page 40, (Filed Under Seal.)

Moreover, by a letter August 25, 2003, Mrs. Cintrón was allowed until noon (12:00 p.m.) of August 26 to sign the amendment to the Agreement. Mrs. Cintrón declined the proposal on letter dated August 25, 2004, but this letter was not faxed until August 26, 2003. However, by letter dated August 27, 2003, on the first paragraph, the Appeal Committee admitted that they met on August 25, 2003 and denied Mrs., Cintrón disability claim that same day. See Petition, App. 429-440 and this Reply, App. 43-55. The alleged opportunity supposedly given to Mrs. Cintrón to amend the Agreement for medical evaluations was a sham.

The Review and Appeal Committees denied Mrs. Cintrón disability claim because she exercise her right to "choose or not to choose" physicians and her right "to agree or not to agree" to accept changes to the Plan and Agreement signed by the parties.

Even though, Mrs. Cintrón submitted more that enough evidence that supports her disability, the Review and Appeal Committees insisted that Mrs. Cintrón failed to submit data that supports her disability claim. Arbitrarily, capricious and in abuse of discretion, the Review and Appeal Committees just selected the data that states "mild degenerative disc disease", subjectively concluded that "the data was poorly correlated to the diagnostic studies" and disregarded all the data that supports all Mrs. Cintrón disabling conditions since 1997, in order to deny her disability claim. The question is: how can physicians determine if Mrs. Cintrón was disabled since 1998 if they had never evaluated her during that period of time? However, the medical records that Mrs. Cintrón submitted support her disability since 1997.[9]

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[9] Mrs. Cintron disabling conditions which among others are: bilateral carpal tunnel and thoracic outlet syndromes, cervical myositis, cervical

The Plan in Section 6.05(b) states:

"The review of the adverse benefit determination will take into account all new information whether or not presented or available at the initial determination. No deference will be afforded to the initial determination.

The review will be conducted by the Employee Benefits Committee ... and will be made by a person different from the person who made the initial determination and such person will not be the original decision maker subordinate"

See Opposition, page 57a and 58a

The Appeal Committee not only afforded full deference to the initial denial, made the same determination and for the same reasons. Also, used almost exactly the same wording and distorted process to evaluate and deny Mrs. Cintrón's claim. Moreover, Mr. John J. Purcell[10] (contact person) who signed both denial letters was also a member of the Review and Appeal Committees. See, Petition, App. 351-355, 437-440. This is evidence that decision-makers involved in both Committees are the same in a clear conflict of interest.

Furthermore, Plan at Section 6.05 states: "The health care professional who is consulted on the appeal will not be the

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and lumbar radiculopathy, fibromyalgia, chronic anxiety with depression, swelling and tenderness of trapezius and shoulders, light pushing of artery, chronic cervical, thoracic and lumbar myofacial pain, fiber tenosynovitis, mild degenerative disc disease, cervical and lumbar spine, bilateral C5-6 root lesion, neuropathy. See Petition, App. 185-325, 334-341, 343-348, 366-414.

[10] Mr. John Purcell seems to have various positions in Review and Appeal Committees such as: Manager Employee Benefits, Benefit Plan Review Committee Secretary, Employee Benefit Committee Secretary, Employee Benefits Committee See, Petition, App. 350, 355, 361, 418, 440, 442.

individual who was consulted during the initial determination or his subordinate...". However, the list of the physicians provided to Mrs. Cintrón by the Review and Appeal Committees was the same. See Opposition, page 58a and Petition, App. 328, 329, 415, 416.

The Plan in Section 6.05 also states: "Claimants will have access to all relevant documents (within the meaning of Lab. Reg. §2560.503-1(m)(8)) and may request the identification of any medical or vocational expert whose advice was obtained on behalf of the Plan in connection with a claimant's adverse benefit determination..." See, Opposition page 57a. Accordingly, Mrs. Cintrón sent a letter dated September 25, 2003 requesting said information, which has not been answered up today. See this Reply, App. 56-60

Respondents states: "Thus, absent bad faith or conflict of interest, a court may only overturn a plan administrator's decision if it is "...without reason, unsupported by substantial evidence or erroneously as a matter of law." Donaho, 74 F.3d at 900." Precisely, this is the situation in this case.

CONCLUSION

Both the Review and Appeal Committees acted in bad faith, arbitrary, capricious, in an abuse of discretion, in a clear conflict of interest and in a breach of agreement. The whole disability claim evaluation and determination process was a sham. Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenia M. Cintrón Parrilla

Miguel A. García Méndez

APPENDIX BA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA,	*	
Plaintiff	*	
v.	*	Civil No.
ELI LILLY DEL CARIBE, INC.,	*	99-1229 (JAF)
et al.,	*	
Defendants	*	

INFORMATIVE MOTION

TO THE HONORABLE COURT:

Comes now plaintiff, Kenia M. Cintron Parrilla, by her counsel, and respectfully informs this Honorable Court that on this same date a First Set of Interrogatories was submitted to the defendants, through their legal representation, by way of certified mail, return receipt requested.

WHEREFORE, plaintiff respectfully informs this Honorable Court.

In San Juan, Puerto Rico, on this 1st day of February 2001.

I hereby certify that on this same date a true copy of this motion was mailed to: Carl Schuster, Esq. and Lizette Velez Rive, Esq., P.O. Box 363128, San Juan, P.R. 00936-3128.

HERNANDEZ SANCHEZ LAW FIRM
First Bank Building, Suite 806
1519 Ponce de Leon Ave.
San Juan, PR 00909-1791
Tel. 722-5814; Fax: 725-1112
By: /s/ Guillermo Macari
Guillermo Macari USDC-PR 206308

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRÓN PARRILLA, Plaintiff v. ELI LILLY DEL CARIBE. INC., et al., Defendants	Civil No. 99-1229 (JAF)

FIRST SET OF INTERROGATORIES

TO: ALL THE DEFENDANTS
Through their legal representation

FROM: PLAINTIFF KENIA M. CINTRON PARRILLA
Through her legal representation

COMES NOW plaintiff Kenia M. Cintron Parrilla, through the undersigned attorneys, and pursuant to Rule 33 of the Federal Rules of Civil Procedure notifies and submits to defendants the following interrogatories to be answered separately, in writing and under oath, within the legal term of thirty (30) days, starting from the date of this requirement and notification.

To the person answering these interrogatories:

1. State your full name, occupation, residential and work address and Social Security number.

2. State your detailed theory of this case.

3. State the exact date in which Mrs. Kenia M. Cintron began working for Eli Lilly del Caribe, Inc.

4. State the exact date in which Mrs. Cintron was assigned the project which required her to use a computer for approximately six to seven hours per workday.

5. State Mrs. Cintron's monthly salary history as an Eli Lilly del Caribe employee.

6. State the exact date in which Dr. Felix Matos examined Mrs. Cintron.

7. State the basis of Dr. Matos' decision to refer Mrs. Cintron to the State Insurance Fund.

8. State the result of the first diagnostic made by the State Insurance Fund on Mrs. Cintron's medical condition.

9. State specifically in what did Eli Lilly and/or its representatives or employees based their doubts that Mrs. Cintron's condition was work related.

10. State the exact agreement reached between Mrs. Cintron and Dr. Felix Matos, Ricardo Flores and Raquel Llavina on August 15, 1997.

11. Please explain the relationship between Eli Lilly and Dr. Marcos U. Ramos, physiatrist.

12. State Dr. Marcos U. Ramos' diagnostic on Mrs. Cintron

13. State and explain specifically the basis of the decision made by Eli Lilly and/or its representatives or employees that they could not respect the agreement reached on August 15, 1997.

14. List the full names, residential and work addresses and relationship with Eli Lilly and/or Health Welfare and Disability Plan (the Plan) of each of the members of the committee that would reassess Mrs. Cintron's case.

15. State wether this internal committee was the Employee Benefits Committee or not. If the answer is no,

please state the full names, residential and work addressess and relationship with Eli Lilly and/or Health Welfare and Disability Plan (the Plan) of each of the members of the Employee Benefits Committee.

16. State wether Mrs. Cintron was informed that the internal committee was the Employee Benefits Committee or not. If the answer is yes, state the full names, residential and work addressess and relationship with Eli Lilly and/or Health Welfare and Disability Plan (the Plan) of each of the persons that informed Mrs. Cintron and the exact date she was informed.

17. State the basis of the decision made by Eli Lilly and/or Health Welfare and Disability Plan (the Plan) and/or its representatives or employees that Mrs. Cintron was not entitled to receive any supplementary payments due to an occupational illness.

18. State the basis of the decision made by Eli Lilly and/or Health Welfare and Disability Plan (the Plan) and lor its representatives or employees that Mrs. Cintron was not entitled to receive extended disability benefits.

19. State the exact procedures that Eli Lilly and/or Health Welfare and Disability Plan (the Plan) and/or its representatives or employees use to evaluate disability claims.

20. State the exact date that Mrs. Cintron's employment was terminated by Eli Lilly del Caribe.

21. State the exact reasons for Mrs. Cintron's employment termination.

22. List all the persons you know that have any personal knowledge of the facts that led to this lawsuit, stating for each one his or her full name, age, occupation, residential and work address and relationship with defendants.

23. List all the documental evidence you will present at trial, stating for each one:

a. Date document was prepared.

b. Full name, residential and work address and relationship with Eli Lilly and/or Health Welfare and Disability Plan of the person preparing the document.

24. List all the witnesses you are planning to call at trial stating for each one his or her full name, age, occupation, residential and work address and relationship with defendants and a brief summary of their intended testimony.

25. List all the expert witnesses you are planning to call at trial stating for each one his or her full name, age, occupation, residential and work address, qualifications as expert witnesses and a brief description of the purpose of their expert testimony.

In San Juan, Puerto Rico, on February 1, 2001.

HERNANDEZ SANCHEZ LAW FIRM
First Bank Bldg. Suite 806
1519 Ponce de Leon Ave.
Santurce, Puerto Rico 00909-1791
TEL. 722-5814/5813
FAX. 725-1112

BY: /s/ Guillermo Macari
Guillermo Macari
USDC-PR 206308

Certified Mail # Z 414 607 713. Return receipt requested.

APPENDIX BB

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA, ET AL. Plaintiff Vs. ELI LILLY INDUSTRIES, INC.; HEALTH WELFARE AND DISABILITY PLAN; LILLY DEL CARIBE, INC.; COMPANY X; COMPANY Y Defendants	Civil No. 99-1229 (JAF)

INFORMATIVE MOTION

TO THE HONORABLE COURT:

COME NOW co-defendants, Lilly Del Caribe, Inc., Eli Lilly Industries, Inc. (hereinafter referred to as "Lilly") and Eli Lilly Industries, Inc., Health, Welfare and Disability Plan (hereinafter referred to as the "Plan"), through their undersigned attorneys, and respectfully inform this Honorable Court that on this same date they have served by certified mail return receipt requested co-plaintiff, Kenia Cintron Parilla, through her attorney of record, Jesus Hernandez Sanchez, Esq., Co-Defendant's Lilly and the Plan's Answers and Objections to Plaintiff's First Set of Interrogatories and Notice of Taking of Deposition for co-plaintiff Miguel A. Garcia Méndez.

WHEREFORE, defendant respectfully requests that this Honorable Court take notice of the aforementioned.

Respectfully submitted.

In San Juan, Puerto Rico, this 19th day of April, 2001.

It is certified that this Informative Motion, was sent by regular mail to plaintiffs' counsel of record, Jesus Hernandez Sanchez Esq., Hernandez Sanchez Law Firm, First Bank Building, Suite 806, 1519 Ponce de Leon Ave., San Juan, Puerto Rico 00909-1791.

SCHUSTER USERAAGUILO & SANTIAGO LLP
PO Box 363128
San Juan, Puerto Rico 00936-3128
Telephone (787)765-4646/ Fax 765-4611

/s/ Lizette Velez Rive
LIZETTE VELEZ-RIVE
USDC-PR No. 209002

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

KENIA M. CINTRON PARRILLA, ET AL. Plaintiff Vs. ELI LILLY INDUSTRIES, INC.; HEALTH WELFARE AND DISABILITY PLAN; LILLY DEL CARIBE, INC.; COMPANY X; COMPANY Y Defendants	Civil No. 99-1229 (JAF)

CO-DEFENDANTS' LILLY AND THE PLAN'S ANSWERS AND OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: CO-PLAINTIFF KENIA M. CINTRON PARRILLA
through her attorney,
Jesus Hernandez Sanchez, Esq.
Hernandez Sanchez Law Firm
First Bank Building, Suite 806
1519 Ponce de Leon Ave.
San Juan, Puerto Rico 00909-1791

PRELIMINARY STATEMENT

Pursuant to the Federal Rules of Civil Procedure, co-defendants Lilly Del Caribe, Inc., Eli Lilly Industries, Inc., (hereinafter referred to as "Lilly") and Eli Lilly Industries, Inc., Health, Welfare and Disability Plan (hereinafter referred

to as the "Plan") - submit their responses to plaintiff's First Set of Interrogatories.

The answers provided are based upon information as is reasonably available. As required by the Federal Rules of Civil Procedure, the answers to these interrogatories provide full, fair and specific information through reasonable efforts to obtain such information. Nevertheless, Lilly and the Plan will supplement these responses as additional information or documentation comes to its attention.

GENERAL OBJECTIONS

1 Lilly and the Plan object to any effort to require defendants to search for documents or information in the possession, custody or control of unnamed entities and/or plaintiff as being unduly burdensome, vexatious and harassing.

2. Lilly and the Plan object to each of the interrogatories to the extent they seek information or documents protected from disclosure under the attorney-client, or other privilege, or the work-product doctrine.

3. Lilly and the Plan object to each of the interrogatories to the extent they seek information or documents which pertain to or originated in the period subsequent to March 5, 1999, the date on which the plaintiff filed its complaint.

4. Lilly and the Plan object to each of the interrogatories to the extent they seek information or documents relating to subjects outside of the scope of the complaint and the allegations and causes of action raised therein.

5. Lilly and the Plan make all of the objections and responses contained herein, including its General Objections and specific responses and objections, while reserving the right to make additional objections as may be deemed appropriate upon further review of information or documents.

DEFINITIONS

The following definitions are incorporated by reference in all of Lilly and the Plan's specific responses and objections to plaintiff's First Set of Interrogatories:

1. "*Irrelevant*" means not relevant to the issues involved in the pending action and not reasonably calculated to lead to the discovery of evidence admissible as to those issues.

2. "*Overbroad*" means irrelevant, burdensome, and unnecessary to the extent the set of interrogatories seek (1) information about the period after March 5, 1999; (2) information about individuals or entities not parties to this actions; and/or (3) any other information pertaining to persons, activities and events that are not reasonably in issue in this action.

3. "*Vague*" means ambiguous or not specified with reasonable particularity.

4. "*Unduly burdensome*" means that it is impossible to provide a response that is complete and sufficient without making an unreasonably complex or onerous investigation or incurring unreasonable expense.

5. "*Defendants*" means exclusively Lilly Del Caribe, Inc., Eli Lilly Industries, Inc., and Eli Lilly Industries, Inc., Health, Welfare and Disability Plan.

ANSWERS AND SPECIFIC OBJECTIONS

1. Ileana Rivera, Human Resources Director, Lilly del Caribe, Inc., PO Box 1198 Carolina, Puerto Rico 00986. The rest of the information requested in this interrogatory is objected on the basis that it is irrelevant to the allegations presented in this case.
2. Interrogatory number two (2) is objected on the basis that it requires a conclusion of law.

3. September 26, 1977.
4. To the best of my knowledge, it is Lilly and the Plan's position that during Cintron's years of employment at Lilly, plaintiff was not assigned to a project which required her to use a computer for approximately six to seven consecutive hours per workday.
5. The information requested is attached as Exhibit 1.
6. Interrogatory number six (6) is objected on the basis that it is overbroad and vague.
7. Dr. Felix Matos referred Cintron to the State Insurance Fund in view of the medical certificate from Dr. Tomas Hernandez dated June 17, 1997 referring her to the State Insurance Fund brought by Cintron.
8. Interrogatory number eight (8) is objected on the basis that it is overbroad and vague. Notwithstanding the objection, the information requested is in the control of the State Insurance Fund.
9. Lilly based its doubts that Cintron's condition was work related on the following, among others: 1) on or around June 1997, the severity of her condition and her medical history in conjunction with her work history did not seem to originate from the workplace; 2) on or around March 1997 Cintron's job required her to work a couple of hours a day on the computer; 3) Cintron's job required her to spend most of her time reading books in order to compare gaps in the pharmacopeia; 4) Cintron's symptoms were not typical of computer related problems for the estimated time spent at the computer; 5) in June 1997, Lydianne Secola performed an ergonomic study of Cintron's work area which revealed that Cintron had bad posture at her workstation; 6) Cintron's condition did not improve with rest and physical therapies while away from work; 7)

Cintron's condition seemed to be systemic in nature rather than work related; 8) Cintron developed an alleged emotional condition while away from work.

10. Interrogatory number ten (10) is objected on the basis that it is overbroad and vague. Notwithstanding the objection, no exact agreement was reached during the August 15, 1997 meeting held between plaintiff, Dr. Felix Matos, Raquel Llivina and Ricardo Flores.
11. None. As with any other physician, the Company refers cases to Dr. Marcos U. Ramos.
12. Please refer to Dr. Marcos Ramos evaluation report regarding plaintiff, attached as Exhibit 2.
13. N/A. Please refer to answer to interrogatory number ten (10).
14. Interrogatory number fourteen (14) is objected on the basis that it is overbroad and vague.
15. Interrogatory number fifteen (15) is objected on the basis that it is overbroad and vague.
16. Interrogatory number sixteen (16) is objected on the basis that it is overbroad and vague.
17. Please refer to answer to interrogatory number nine (9). Inasmuch as the Company believed that plaintiff's illness was not work related, plaintiff's supplementary payments were denied in compliance with Company policies and procedures.
18. Please refer to Exhibit 3.
19. In general terms the procedure that Lilly follows to evaluate disability claims is as follows. Employees who are absent from work due to illness/injury are evaluated by the Puerto Rico Employee Health Service's Department at least once a month. During said visits

pertinent information and data is obtained. Laboratory exams and/or second opinions by other physicians may be requested, if necessary. Once the Puerto Rico Employee Health Service's Department physician evaluates all information and submits his/her recommendation of disability, the case is submitted to the Employee Benefits Committee in the United States for extended disability benefits consideration.

20. December 23, 1998.

21. Please refer to Exhibit 3.

22. At this time, Lilly and the Plan have identified the following persons who may have knowledge of some of the facts alleged in the Complaint: Ricardo Flores, former Lilly's Human Resources Director; Ileana Rivera, Lilly's Human Resources Director; Dr. Felix Matos, Lilly's In-House Physician; Raquel Llivina, Human Resources Manager at the time of the facts alleged in the Complaint; Lydianne Sécola, Health & Safety Leader; Luz. E. Soto, Compliance Officer; Evelyn Rodriguez, Director of Quality Assurance. There may be, however, other persons which may have knowledge of the facts alleged in the Complaint. The rest of the information requested in this interrogatory is objected on the basis that it is irrelevant to the allegations presented in this case.

23. Lilly and the Plan have not made a final decision as to the evidence they will present at trial. At this time Lilly and the Plan anticipate that they will be using the following documents as evidence in the case: 1) plaintiff's medical record with the Company; 2) Lilly's Employee Manual; 3) plaintiff's personnel file with Lilly and; 4) Eli Lilly Puerto Rico Extended Disability Plan. Co-defendants Lilly and the Plan, however, reserve the right to

supplement their documentary evidence list pursuant to the pending discovery.

24. Lilly and the Plan have not made a final decision as to the witnesses they will present at trial. At this time Lilly and the Plan anticipate that they will be using the following witness in the case: 1) Ricardo Flores; 2) Ileana Rivera; 3) Raquel Llivina and; 4) Dr. Felix Matos. Co-defendants Lilly and the Plan, however, reserve the right to supplement their witness list pursuant to the pending discovery. The rest of the information requested in this interrogatory is objected on the basis that it is irrelevant to the allegations presented in this case.

25. Lilly and the Plan are not anticipating to call expert witnesses at this time. Co-defendants Lilly and the Plan, however, reserve the right to announce expert witnesses pursuant to the pending discovery.

I, Ileana Rivera, in my capacity as Human Resources Director of Lilly Del Caribe Inc. ("Lilly") declare under penalty of perjury under the laws of the United States of America that all of the foregoing is true and correct to the best of my personal knowledge and on the basis of the information made available to me.

WHEREFORE, I subscribe the present statement in San Juan, Puerto Rico, on this 19th day of April, 2001.

/s/ Ileana Rivera
Ileana Rivera

In San Juan, Puerto Rico, this 18 day of April, 2001.

WE CERTIFY: On this same date we have notified a true and exact copy of the foregoing writ, by certified mail return receipt requested, to plaintiff's attorney of record, Jesús

Hernández Sánchez Esq., Hernández Sánchez Law Firm, First Bank Building, Suite 806, 1519 Ponce de Leon Ave., San Juan, Puerto Rico 00909-1791.

SCHUSTER USERA AGUILO & SANTIAGO
P. O. Box 363128,
San Juan, Puerto Rico 00936-3128
Tel. 765-4646/Fax '765-4611

/s/ Lizette Velez-Rive
LIZETTE VELEZ-RIVE
USDC-PR No. 209002

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Exhibit I[1]

PROG: PERSCD-440 Eli Lilly Industries, Inc. Date: 02/19/01
Carolina, P. R. Page: 01
Salary Card

Employee Name	Emp. Number	Date of Transfer
Kenia M. Cintron	584-66-4691	
Date of Entry	Service Credit Years	
09/26/77	0	

Effective Date	Reason	Dept	Job Title	Salary Class	Years
03/01/79	NC	63P	Chemist	F	1.06
06/01/79	CF	63P	Chemist	F	1.09
09/01/79	M	63P	Chemist	F	2.00
03/01/80	MP	64P	Laboratory Supervisor	G	2.06
09/01/80	M	64P	Laboratory Supervisor	G	3.00
03/01/81	S	64P	Laboratory Supervisor	G	3.06
03/03/81	CF	64P	Laboratory Supervisor	G	3.06
09/01/81	LP	64P	Laboratory Supervisor	H	4.00
01/01/82	DC	38J	Laboratory Supervisor	H	4.04
03/01/82	TC	38J	Supervisor Laboratory	H	4.06
06/01/82	DC	43J	Sr. Q.C. Representative	H	4.09
03/26/83	NC	43J	Sr. Q.C. Representative	H	5.06
09/01/83	M	43J	Sr. Q.C. Representative	H	6.00
03/26/84	NC	43J	Sr. Q.C. Representative	H	6.06
09/01/84	M	43J	Sr. Q.C. Representative	H	7.00

[1] This report identified as Exhibit I was provided to plaintiff's attorneys and apparently appears to be incomplete and altered manner.

Effective Date	Reason	Dept	Job Title	Salary Class	Years
03/26/85	NC	43J	Sr. Q.C. Representative	H	7.06
09/01/85	M	43J	Sr. Q.C. Representative	H	8.00
09/01/86	LP	42J	Sr. Q.C. Representative	I	9.00
03/26/87	NC	42J	Sr. Q.C. Representative	I	9.06
09/01/87	M	42J	Sr. Q.C. Representative	I	10.00
03/26/88	NC	42J	Sr. Q.C. Representative	I	10.06
09/01/88	LP	42J	Sr. Q.C. Representative	J	11.00
03/26/89	NC	42J	Sr. Q.C. Representative	J	11.06
07/01/89	BP	49J	Supervisor	K	11.10
09/01/89	M	49J	Supervisor	K	12.00
03/26/90	NC	49J	Supervisor	K	12.06
09/01/90	M	49J	Supervisor	K	13.00
01/02/91	FI	49J	Supervisor	K	13.04

Effective Date	Salary Range Min.	Max	Present	Recommended	Appoved	Perf
03/01/79	920.00	1250.00	895.00	0.00	0.00	0
06/01/79	995.00	1325.00	895.00	966.00	966.00	0
09/01/79	1040.00	1380.00	966.00	1070.00	1070.00	0
03/01/80	1115.00	1610.00	1070.00	1170.00	1170.00	0
09/01/80	1145.00	1650.00	1170.00	1290.00	1290.00	0
03/01/81	1145.00	1650.00	1290.00	**1400.00**	**1415.00**	0
03/03/81	1275.00	1900.00	1415.00	1543.00	1543.00	0
09/01/81	1380.00	2060.00	1543.00	1695.00	1695.00	0
01/01/82	1380.00	2060.00	1695.00	0.00	0.00	0
03/01/82	1380.00	2165.00	1695.00	0.00	0.00	0
06/01/82	1380.00	2165.00	1695.00	0.00	0.00	0

Effective Date	Salary Min	Range Max	Present	Recommended	Appoved	Perf
03/26/83	1400.00	2195.00	1845.00	0.00	0.00	0
09/01/83	1415.00	2225.00	1845.00	1985.00	1985.00	4
03/26/84	1515.00	2385.00	1985.00	0.00	0.00	0
09/01/84	1530.00	2405.00	1985.00	2115.00	2115.00	3
03/26/85	1530.00	2405.00	2115.00	0.00	0.00	0
09/01/85	1550.00	2430.00	2115.00	2265.00	2265.00	4
09/01/86	1885.00	2915.00	2355.00	2535.00	2535.00	4
03/26/87	1990.00	3075.00	2535.00	0.00	0.00	0
09/01/87	2005.00	3095.00	2535.00	2750.00	2750.00	4
03/26/88	2660.00	3255.00	2750.00	0.00	0.00	0
09/01/88	2805.00	3465.00	2750.00	2985.00	2985.00	4
03/26/89	2975.00	3675.00	2985.00	0.00	0.00	0
07/01/89	3620.00	4480.00	2985.00	**0.00**	**3100.00**	0
09/01/89	3710.00	4535.00	3100.00	3345.00	3345.00	4
03/26/90	3914.00	4784.00	3345.00	0.00	0.00	0
09/01/90	3914.00	4784.00	3345.00	3590.00	3590.00	4
01/02/91	4377.00	5412.00	3590.00	3877.00	3877.00	0

Exhibit II

ASSOCIATE PROFESSOR
DEPARTMENT OF REHABILITATION MEDICINE
BOSTON UNIVERSITY SCHOOL OF MEDICINE
MARCOS U. RAMOS, M.D., F.A.A.P.M. & F
FORMER ASSISTANT CHIEF
DEPARTMENT OF REHABILITATION MEDICINE
UNIVERSITY HOSPITAL
1977-1969

August 7, 1997

Felix V. Matos, M.D.
Medical Director
Eli Lilly Industries, Inc.
Call Box 1198
Pueblo Station
Carolina, Puerto Rico 00985-1198

RE: Kenia M. Cintron-Parrilla
DOB: 02-17-56
SSN: 584-66-4691
DOI: May 1997
DATE OF EXAM: August 6, 1999

Dear Dr. Matos:

Thank you kindly for referring your employee, Mrs. Cintron, for evaluation. She was evaluated on the above-noted date **in my Puerto Rico office**.

This 41-year old female used to work as a regulatory compliance officer for Eli Lilly Industries until June 18,

1997, when, she stated, she was unable to continue working. She described her last occupational duties as performing mostly office work, working on the computer, typing reports, etc... Recently, she stated, she was involved in a project which required transferring data from books and from other reports. Professionally, she holds a bachelor's degree in chemistry.

On commenting further about her occupation, she stated, she is not really a typist, rather, she stated she needs to look at the keyboard in order to type. She described her work station as a sit-down station with a computer video display terminal in front of her, somewhat higher than usual. She has a low keyboard and, since there is no space for the mouse to be kept close to the keyboard, the mouse is located on the left-hand side of the video display terminal (her right side). She further described how she places the material to be copied into the computer on her right- hand side, requiring her to perform right-rotation/right-lateral flexion of the neck in order to read the material, then coming back to the anatomical position looking downward at the keyboard and then looking upward at the video display terminal.

The history of the onset of symptoms in question dates back to some time in **May 1997.** She stated that while shopping at a store with her daughter she extended her right arm to reach for something when she developed severe and sudden pain in the right arm. The pain, she stated, was accompanied by a sensation of loss of strength in the entire right arm. She denied any similar previous episodes, either at work or at home. She denied any direct trauma, any sudden event, or any other causative factor to explain those symptoms.

She was seen by a physiatrist who examined her and told her she had "spasms in the neck". She was then referred to a neurologist who performed an EMG. According to Mrs. Cintron, that test was abnormal. She continued working, however, the symptoms continued with pain, now in both arms, both hands, with stabbing pains in both elbows and pain up into the neck and, lately, into the upper and lower back regions. In addition, she mentioned she has noticed numbness in the lateral aspect of the thighs, in the calves, and in the toes. As mentioned, she has been out of work since June 18, 1997.

Upon describing her present status, she mentioned she continues with severe pain in both shoulders, mostly on the right side, along with pain in both elbows, headaches, pain in the neck, pain in the upper and lower back, pain in both thighs, tingling down into the toes. At present she is on Norflex, Relafen, Zantac, and vitamin C supplement.

The past history was extremely significant and includes two previous occupational incidents and other trauma as follows:

1984, she stated, she developed some pain in the neck and in the back. At that time she was seen by a rheumatologist. Apparently some blood samples were obtained, however, she does not remember the results of those studies. She was also seen by a physiatrist, Dr. Lao. An EMG of the lower extremities was performed and at that time she was told she had "spasms". No other diagnosis was apparently established.

1991 - 1992 At that time, she stated, and while working and being exposed to the chemical Lorabid she developed an episode of bronchial asthma. She was out of work for one and one-half months. She was treated and, according to her, she has recovered completely with no residuals.

In **August/September 1995,** she stated, she experienced an episode of unconsciousness. She mentioned that on a Saturday while at home she was found on the floor by one of her neighbors, apparently unconscious. She does not remember any trauma, no preceeding aura, nor any abnormal movements, any seizures, or the like. According to her, she may have been on the floor for approximately one hour; however, there were no abrasions, lacerations, or hematomatas. She was taken to a local hospital and, according to her, she "could not remember things and had amnesia." An MRI was performed and, she stated, she was told she may have, perhaps, a "frontal lobe inflammation". However, according to her, no specific diagnosis was ever established. She has sustained no other similar episodes.

November/December 1996 At that time, she stated, while walking on the premises of the company she tripped on the edge of a rug and fell. There were, however, no injuries sustained and no time lost from work.

The rest of the past medical history includes a cholecystectomy, an appendectomy, a tubal ligation, and left oophorectomy. In 1985 she underwent a reduction mammoplasty and an abdominoplasty.

Major Illnesses: February 1996 At that time she suffered a major gastrointestinal infection with acute diarrhea and dehydration. She was admitted to a hospital where she remained for four days. She was treated with antibiotics. She was told she either had a virus or a salmonella or Shigella infection. She did well with no reoccurrences.

She is said to be allergic to Percocet and Lorabid.

A female clinical assistant remained present with Mrs. Cintron and this examiner throughout the entire physical examination process.

On examination, Mrs. Cintron could be described as a well-developed, short-statured, moderately obese adult female in no acute distress who appeared very pleasant, cooperative, and quite jovial. It is significant to observe that all the rather serious pieces of medical information mentioned above were offered in a rather jovial and "matter-of-fact" manner by Mrs. Cintron. Her gait was normal and she was using no assistive devices.

The blood pressure in the right arm was 140/92, and 132/88 in the left arm. The pulse was 78 beats per minute. Her height was 62 inches, and her weight was 164 pounds.

Examination of the scalp, eyes, ears, nose, and throat were unremarkable. Initially, on attempting direct examination of the mobility of the neck she moved the neck so minimally that it became quite obvious that Mrs. Cintron was attempting to affect the results of the examination. In view of this, the examination of the scalp, eyes, ears, nose, and throat were repeated. This time and on indirect examination the cervical excursion she voluntarily produced without outside help was quantitatively measured using a dual inclinometer system according to the standard protocol established by the American Medical Association. These values, as mentioned, are the ones she voluntarily produced during indirect examination and may not necessarilly represent the maximal available cervical motion. Those values were recorded in degrees of motion as follows:

Right Rotation	0 to 70
Left Rotation	0 to 65
Flexion	0 to 60
Extension	0 to 65
Right Lateral Flexion	0 to 45

Left Lateral Flexion 0 to 45

Both carotids were clear. No bruit was noted on auscultation over the supraclavicular regions both with the arms in the anatomical position and in a position of maximal elevation. Auscultation and percussion of both lung fields elicited clear breath sounds bilaterally. Auscultation of the heart limited to the aortic and pulmonic focci only elicited a regular rhythm of 84 beats per minute. No murmurs or gallops were audible.

Clinical examination of the abdomen was unremarkable. There was a 4" surgical scar over the right upper quadrant, and a 1 1/2" surgical scar over the right lower quadrant, as well as a 6" surgical scar of the suprapubic region, and an 8" surgical scar under each breast at the thoraco-abdominal junction. All those scars were well-healed, non-tender, and non-adherent. No incisional hernias were present. The breasts, genital, and rectal areas were not exposed. Those areas were not examined.

The neurological examination of this right-hand dominant, well-oriented adult female was non-focal. The cranial nerves function was grossly normal and equal bilaterally with no asymmetries. The peripheral neurological examination was also performed and those findings, too, were negative. The deep tendon reflexes over both upper and both lower extremities were normoreactive and grossly equal. No long tract signs were noted. No pathological reflexes were present.

The sensory appreciation to light touch, deep touch, vibratory, pinprick, and temperature stimuli was reported as normal and symmetrical over both upper and both lower extremities. No sensory deficits or altered sensations were

reported, especially over the arms and over the hands and all the fingers and both thumbs.

The muscle strength in both upper and lower extremities, initially, could not be reliably assessed because of her complaints of severe pain even when contracting those major muscle groups against their own weight; however, no regional atrophies were noted. Quite the contrary, the muscle development noted in all the extremities was symmetrical and no regional atrophies were noted. In order to quantitatively assess the muscle mass of both upper extremities, circumferences at homologous levels were obtained at the level of the axilla and also in reference to the lateral epicondyle of the humerus and the following measurements were noted:

	*Right	Left
Axillary	14 3/8"	14 1/4"
4" Above	10 1/4"	10"
4" Below	9 3/8"	8 3/4"

*The slight increase in the muscle mass present in the right, dominant upper extremity at all three levels is a reflection of the patient's right-hand dominance. This increase is within normal limits and is considered a normal physiological adaptation whereby the dominant extremity handles the more difficult and heavier tasks, and the more dextrous tasks. This, as you can see, is the case with Mrs Cintron.

Upon initially assessing the handgrip strength in a direct manner she reported severe pain in both arms while attempting to apply even the most minimal force to the Jamar dynamometer. After much verbal encouragement, however, she started to increase the tension to the point where the following three highest values of force were recorded by the

dynanometer in pounds while in the second adjustment position:

RIGHT HANDGRIP: 78, 70, 65 pounds
LEFT HANDGRIP: 75, 60, 55 pounds

On attempting to measure the mobility of the major joints of the upper extremity, once again, Mrs. Cintron's initial reaction was her statement regarding her inability to move the shoulders, elbows, and wrists in the prescribed directions as those motions produced significant and severe pain. However, after much verbal encouragement and after much convincing, she would move the body parts, allowing for the following quantitative measurements to be taken using a dual inclinometer system according to the American Medical Association's standards:

Shoulders:	Right	Left
Flexion	0 to 165	0 to 170
Abduction	0 to 165	0 to 170
External Rotation	0 to 90	0 to 85
Internal Rotation	0 to 70	0 to 70
Elbows:	Right	Left
Flexion	0 to 150	0 to 150
Pronation	0 to 85	0 to 90
Supination	0 to 90	0 to 90
Wrists:	Right	Left
Dorsiflexion	0 to 80	0 to 80
Volar flexion	0 to 80	0 to 80
Ulnar Deviation	0 to 30	0 to 30
Radial Deviation	0 to 15	0 to 15

The mobility of the lumbar region was quantitatively measured in a similar manner, again, according to the

specific protocol established by the American Medical Association using a dual inclinometer system. The following values of lumbar mobility were recorded in degrees as follows:

Lumbar Flexion	0 to 62 degrees
Lumbar Extension	0 to 22 degrees
Lumbar R Lateral Flexion	0 to 27 degrees
Lumbar L Lateral Flexion	0 to 23 degrees

The straight leg raising maneuver was performed in an unrestricted and pain-free manner up to 85 degrees bilaterally without producing any complaints of pain nor radicular-type symptoms into the buttocks or lower extremities. This measurement was obtained using a goniometer.

The leg length measured 33 1/2" bilaterally when measured from the anterior superior spine to the medial malleoli.

Initially, attempting the most inconsequential touch over the entire lumbar paraspinous muscle mass elicited complaints of severe and unbearable pain, along with a rather violent contraction of the paraspinous muscles, along with multiple facial expressions. In response to questions as to whether there was any area in the trunk from the neck down to the buttocks that would not hurt in response to the most gentle touch using a piece of cotton gauze and the rubber tubing of a stethoscope, Mrs. Cintron mentioned that the entire region of the upper, middle and low back region was acutely painful. In order to assess the degree of volition in her responses, a rubber padded transducer with an area measuring 0.75 square inches connected to a Chatillon dynamometer was used to test homologous areas of the upper, middle, and lower cervical, thoracic, and lumbar paraspinous muscle masses. In that manner, progressive

amounts of pressure were gradually exerted. Mrs. Cintron was instructed to alert this examiner at the time when the pressure produced by the transducer pad became unbearable to her. The results of this algometry test (pain measurement) are expressed below in the number of pounds of force needed to produce unbearable pain, as reported by the patient:

ALGOMETRY TEST

Muscle Mass	Right	Left
Upper Lumbar	2.0 pounds	0.5 pounds
Middle Lumbar	2.5 pounds	1.0 pounds
Lower Lumbar	1.5 pounds	1.0 pounds
Upper Thoracic	1.5 pounds	0.5 pounds
Middle Thoracic	2.0 pounds	1.5 pounds
Lower Thoracic	1.0 pounds	1.5 pounds
Upper Cervical	0.5 pounds	0.5 pounds
Middle Cervical	1.0 pounds	0.5 pounds
Lower Cervical	0.5 pounds	0.5 pounds

The three major regions of the back were then examined simultaneously with other non-related areas while diverting her attention to the latter. In that manner, no pain was reported in any area. No spasms were demonstrable. There were no areas of tightness or tenderness, nor was there any palpable fibrosis.

When the lumbar region was examined in that manner, no complaints of discomfort were reported whatsoever. As mentioned, no spasms were demonstrable over the lower, mid and upper paralumbar muscles, over the multisidi, over the sacrospinalis, or over the musculotendinous junction of the erector spinae.

The gluteal region was similarly examined and, again, no pain was reported. The gluteal musculature was well-

developed, soft, non-tender, and free of acute spasm to deep palpation and prolonged pressure. Both right and left sacroiliac joint regions and sciatic notches were similarly non-tender to deep pressure. Pressure over the sciatic nerves along the posterior aspect of both thighs also failed to produce any discomfort.

Similarly, the cervical, shoulder girdle, parathoracic, and parascapular muscle groups were well-developed, easily palpable, non-tender, and free of active spasms or fibrositic nodules to the deepest and vigorous palpation. Both right and left paracervical, suboccipital, scaleni, sternocleidomastoid, levator scapula, and upper and lower trapezius muscle groups were well- developed and soft to palpation. In the shoulder girdle regions, both right and left supraspinatus and infraspinatus and teres major and minor, and rhomboid muscle groups were similarly soft and non-tender to direct palpation.

Palpation over the upper extremities elicited similar complaints of acute pain, mostly in the right side. When both arms were palpated simultaneously, however, while diverting her attention to the left upper extremity, Mrs. Cintron complained of some generalized tenderness in the left arm during simultaneous palpation over the major arm muscles of the right upper extremity including the deltoid, the biceps, the triceps, and over the tendinous origin of the forearm muscles and over the medial and lateral epicondylar regions. No complaints of pain in the right upper extremity were reported, however, when examined in this manner.

Compression and distraction maneuvers to both shoulder joints with the arms held in the anatomical position did not increase her symptoms.

Palpation over both forearms and especially over the dorsum of the wrists elicited multiple complaints of pain. In view of this, simultaneous palpation over both forearms while diverting her attention to the left forearm allowed this examiner to palpate quite deeply and in detail the right forearm and wrist.

In that manner, no complaints of any discomfort whatsoever were reported in the right forearm. Conversely, simultaneous palpation of both forearms while diverting her attention to the right forearm elicited no complaints of pain in the left forearm even though palpation over the left forearm was performed quite vigorously. The gliding motions of the flexor tendons of the distal forearms were normal. There was no evidence of any catching or clicking.

Examination of both hands, fingers, and thumbs elicited normal findings. The motions of the finger and thumb joints were unrestricted and pain-free. The opposition of each thumb was adequate, and there was no evidence of any joint effusion. The color of the skin over both hands was within normal limits and symmetrical. There was no evidence of swelling or joint effusion present.

The radial pulse was normal and equal bilaterally when assessed with each upper extremity held in the anatomical position, as well as in a position of maximal medical elevation. There was no evidence of threadiness, nor diminished pulse, no tingling sensation or other altered sensation, nor change in temperature in the hand, nor any discoloration of the skin especially while holding the right arm and then the left arm in the overhead position for an extended period of time.

Once again, the motor, sensory, and reflex functions of both upper extremities were tested. There was normal

sensation in both forearms and in both hands. No sensory deficits or disturbances were identified on repeated trials. No weakness was noted in the intrinsic muscles of the hand or in the forearm musculature.

The Tinel's sign was negative at the level of both wrists and both elbows (forceful tapping over the median and ulnar nerves). Those maneuvers failed to produce any radicular symptoms nor any discomfort or hypersensitivity at all. Palpation of the ulnar nerve at the ulnar canal immediately posterior to the medial epicondyle did not produce any pain in either the right or left side. Carpal compression failed to produce any pain. In fact, gentle tapping over the volar and dorsal aspects of the wrists elicited severe pain over the dorsal aspect of the wrists while no pain was elicited on tapping over the volar aspect. The Phalen's test was also negative bilaterally, as was the reverse Phalen's test.

Using a Chatillon strength dynamometer, the muscle strength of eight major action muscle groups of both upper extremities was quantitatively measured in pounds of force. These measurements were obtained at the point of maximal mechanical advantage for each muscle action tested by placing the rubber transducer pad of the dynamometer over the distal portion of the bone directly affected by the muscles tested:

Muscle	Right	Left
Shoulder Flexors	29.5 pounds	28.5 pounds
Shoulder Extensors	25.0 pounds	27.0 pounds
Shoulder Abductors	23.0 pounds	25.0 pounds
Shoulder Adductors	30.0 pounds	30.0 pounds
Elbow Flexors	27.5 pounds	30.0 pounds
Elbow Extensors	29.5 pounds	25.5 pounds

Wrist Dorsiflexors	16.0 pounds	16.0 pounds
Wrist Volar flexors	16.5 pounds	18.0 pounds

These values are judged to be within normal limits. Her efforts and inter-trial consistency were judged the be maximal. No complaints of pain were reported during that test.

Palpation over both legs elicited mild generalized tenderness over all the major muscle groups of both upper and lower extremities. When examined simultaneously while diverting her attention to other non-related areas, however, the major muscle groups of both lower extremities could be palpated quite deeply without any eliciting any complaints of pain whatsoever. There was normal muscle mass development noted with no areas of acute tightnes, tenderness, nor any swelling detected.

There was normal weight-bearing function of both lower extremities. The function of both hips, elbows, and ankles was within normal limits and pain-free in all planes.

The muscle mass of the lower extremities was quantitatively measured and the circumferences at three homologous levels were obtained in reference to the adductor tubercle of the medial femoral condyle. The values obtained were as follows:

	Right	Left
6" Above	19 1/4"	19 3/4"
3" Above	16 1/4"	16 1/2"
6" Below	14 1/2"	14 7/8"

The circumferences of both knees were within normal limits and virtually symmetrical bilaterally. There was no evidence of any anteroposterior or mediolateral laxity detected. The McMurray's test and drawer sign were

negative bilaterally. No crepitus was audible. There was normal patellar tracking. No evidence of any periarticular thickening was noted, either.

The motor, reflex, and sensory examinations of both lower extremities was again repeated and was found to be within normal limits. There were no lateralizing signs detected.

These findings were confirmed; being demonstrable when examined in both a direct and indirect manner. At this point the examination was concluded.

I have reviewed all the documents you have sent me in connection with Mrs. Cintron-Parrilla. Those include a check-list form document from Dr. Tomas Hernadnez, neurologist. That practitioner's original note dates back to September 11, 1995. There are some notations in the history portion of the form where the only notation in the neurological examination is the fact that Mrs. Cintron-Parrilla weighed 159 pounds and was 63 inches in height. There is no other notation made under the physical examination. At that time Dr. Hernandez' impression was notated as cerebral contusion and the fact that an EEG was performed and appeared to be within normal limits.

Based on these documents made available to me, it appears that Dr. Hernandez saw Mrs. Cintron-Parrilla on September 11, 1995; September 14, 1995; September 25, 1995; and October 23, 1995. Those visits appear to be related to the episode in her history of being "unconscious". No specific diagnosis was mentioned in those documents. It appears that, according to Dr. Hernandez, the MRI performed on September 21, 1995, was negative.

The next entry was on June 10, 1997. At that time Dr. Hernandez mentioned the pain in the arm as being sudden in

nature, even though there is no mention about her occupational duties. By June 21, 1997, he refers her to the state insurance fund. Dr. Hernandez mentioned some "T.O.S." (thoracic outlet syndrome) even though there were no documented findings to support a diagnosis.

These documents also include some tracings of a somato-sensory evoked potential study presumably performed by Dr. Hernandez. Very little can be commented about this study since there is no proper labeling of these studies. We don't even know which specific structures were being studied, which nerves were sampled, the placement of electrodes, etc... Not knowing what these curves represent, it is impossible to make any judgement. However, it should be noted that when homologous numbers are compared in terms of stimulus, intervals, amplitudes, and areas, that the difference between the two sides noted is, at times, less than one millisecond, and other times with a difference of less than a fraction of a microvolt in amplitude.

Despite the lack of any physical findings in his brief examination, and these insignificant differences in the values of the curves of the somato-sensory evoked potential study, it is most surprising to this examiner to see that Dr. Hernandez diagnosed her condition as a thoracic outlet syndrome. It is even more surprising to see that he referred her to El Fondo with a bilateral thoracic outlet syndrome, along with pain in the back when pain in the back is not one of the clinical features of a thoracic outlet syndrome. The biggest quantum leap is noticed when he refers all these "diagnoses" to her work in the absence of specific physical findings consistent with the diagnosis of thoracic outlet syndrome. I would give no validity to these statements.

As you very well know, there are specific clinical findings and hallmarks which are pathognomonic of the condition of thoracic outlet syndrome, none of which have ever been demonstrated in Mrs. Cintron-Parrilla's case, nor by her physician, nor by the physiatrist who saw her, and nor by this examiner.

The documents you provided me with also include a copy of an evaluation performed by either Dr. Lugo-Emanuelli, or Dr. Garcia, physiatrist. They obtain a history of pain in the extremities which apparently she referred to the febrile and diarrhea episode of February 1997. The physical findings that physiatrist elicited were essentially similar to the ones I elicited except for the presence of tenderness and spasms in the cervical region, in the lumbosacral region, and a positive Tinel sign on the right side at the time when they examined her on June 2, 1997. The rest of their physical examination was normal. Notice that the Phalen test, the Addsen test, and the complete neurological examination was negative.

The laboratories studies, the anti-nuclear antibodies, the complete blood chemistry and thyroid studies proved to be negative. A complete hematological urinalysis and microscopic urinalysis studies were negative. X-rays of the cervical and lumbosacral spines were negative, too. Radiological renal studies were similarly negative. The lumbar spine and chest MRI (in an attempt to show the thoracic outlet structures) proved completely negative.

From the history it appears that this 41-year old woman, a regulatory compliance officer, claims she sustained onset of pain with sensation of loss of strength in the right arm three months ago in May 1997 while shopping and reaching for an elevated object. Initially she was seen by a physiatrist who diagnosed her condition as "spasms in the neck". She

continued working into June 1997, however, she claims her symptoms expanded to include pain in both arms and especially both elbows, both hands, with pain to the neck and even into the upper and lower back regions, along with numbness into the thighs, calves, and toes. Mrs. Cintron-Parrilla decided to remain out of work as of June 18, 1997, due to her multiplicity of complaints.

The results of this examination are completely negative. This examination failed to show a single piece of clinical evidence in support of any systemic, regional or generalized musculoskeletal condition in this woman. Quite the contrary, the results of this examination showed normal musculoskeletal function in the upper and lower extremities, normal strength in the especially in the upper extremities, normal mobility of all the major muscle joints of the extremities and of the entire axial region, as well as intact peripheral neurological function.

Notice that since the diagnosis of thoracic outlet syndrome was mentioned, a careful neurological and neurovascular examination of the upper extremities was repeated on several occasions and in several different ways less familar to the patient. The results were entirely negative.

Based on all those findings, in my medical opinion, this woman is not impaired from performing all her regular occupational duties. In my medical opinion, if she had some cervical myositis back in June at the time when she was seen by the physiatrist, then there has been a complete resolution of those symptoms and signs.

Her work station should perhaps be studied and, if necessary, modified in order for her to have a more suitable, ergonomic work station, if her description of her original work station is indeed accurate. As you know, one of my

associates, Ms. Flavia Bayron, is a master's degree level physical therapist who has extensive experience in work station analysis. Should you need those services, we will be more than glad to refer this situation for her evaluation and recommendation.

In summary, in my medical opinion, there are no physical reasons to preclude Mrs. Cintron-Parrilla from performing the typical duties of a regulatory compliance officer on a full-time basis as she described. She is in need of no medical nor surgical treatment at this time.

I trust I have answered your questions. Thank you for asking me to evaluate Mrs. Cintrón-Parrilla.

Sincerely yours,

/s/ Marcos U. Ramos
Marcos U. Ramos, MD
Medical Director

MUR/ehc
cintron.rec
rec

Exhibit III

Lilly
Lilly del Caribe, Inc.
PO Box 1198
Carolina P R 00986-1198
(787) 257-5555

2 de febrero de 1999
Sra. Kenia Cintrón
PO Box 232
Naguabo, Puerto Rico 00718-0232

Estimada señora Cintron:

Luego de nuestra reunión del pasado 11 de enero, procedí a verificar el historial de su reclamación de beneficios por incapacidad con nuestra compañía.

Entendíamos que usted regresaría a trabajar al finalizar su licencia por incapacidad a corta plazo. Durante el mes de mayo de 1998, informó al Departamento de Medicina Industrial por primera ocasión, que tenia intención de solicitar beneficios bajo nuestra política de Incapacidad Extendida (Extended Disability Leave). Aunque a primera impresión se le informo que posiblemente no cualificaría, se le solicito cierta información médica para cumplir con el procedimiento establecido, y se le citó para que regresara en dos semanas. Por el contrario, usted nunca regresó al Departamento de Medicina Industrial, no sometió los resultados médicos requeridos, ni volvió a comunicarse con el Dr. Félix Matos.

Su solicitud del 11 de enero, sobre el procesamiento de beneficios de incapacidad largo plazo, luego de haber sido

dada de baja de la compañía, es tardía, por lo cual no puede ser procesada.

Espero haber podido aclarar cualquier duda.

Atentamente,

/s/ Ileana Rivera
Recursos Humanos
cacr

(Certified Translation)[1] Exhibit III

Lilly
Lilly del Caribe, Inc.
PO Box 1198 Carolina, PR 00986-1198
(787)257-5555

February 2, 1999
Mrs. Kenia Cintron
PO Box 232
Naguabo, Puerto Rico 00718-0232

Dear Mrs. Cintron:

After our meeting on this past January 11th, I proceeded to verify the history of your claim for disability benefits with our company.

It was our understanding that you would return to work at the end of your short-term disability leave. During the month of May 1998, you informed the Industrial Medicine Department for the first time that you intended to request benefits under our policy of Extended Disability Leave. Although under our first impression you were informed that you may not qualify, certain medical information was requested from you so as to comply with established procedures, and you were given an appointment to return in two weeks. On the contrary, you never returned to the Industrial Medicine Department, you did not submit the required medical results, nor did you contact Dr. Félix Matos again.

---

[1] This certified translation is filed in the District Court, Docket Number 11 and identified as Exhibit 10

Your request of January 11 in connection with processing long-term disability benefits, after you had been released from the company, is late, therefore it cannot be processed.

I hope I have been able to clarify any doubts.

Sincerely,

(Signed: Illegible)
Ileana Rivera, Director
Human Resources
cacr

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
- CERTIFIED –
To be a correct translation
prepared and/or submitted
for certification.
/s/ Edie Núnez 4/16/99
Edie Núnez
Certified Court Interpreter
Administrative Office
of the United States Court

APPENDIX BC

www.lilly.com **Lilly**

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, Indianan 46285
U.S.A.

Phone 317 276 2000

August 25, 2003

BY FAX (787-874-0025) AND REGULAR MAIL

Ms. Kenia Cintrón
P.O. Box 388
Naguabo, Puerto Rico 00718-0388

Dear Ms. Cintron:

This is to confirm our telephone conversation on Friday, August 22, 2003, in which we discussed the possibility that Eli Lilly and Company Employee Benefits Committee ("Committee") would extend the ninety (90) day review period provided in Section 6.05(b) of the Plan fro the Committee to decide your appeal, for an additional thirty (30) days, Up to and including September 26, 2003. Consequently, this proposal would also amend paragraph nine (9) of the Agreement executed by the parties on August 14, 2002 ("Agreement").

As describe in the Committee's July 3, 2003, correspondence to you, the Committee requested (as did the Benefit Plan Review Committee before it) that you see a neurologist and a psychiatrist so that the Committee could further evaluate your claim for disability benefits. In response, you claimed that the Committee was modifying the

Plan's requirements and questioned the Committee's authority to request an independent medical evaluation. Moreover, you indicated in your July 16 correspondence that you would not comply with the Committee's request without imposing additional conditions (e.g. requiring a medical questionnaire for your physicians). Last Friday, you confirmed that you had not seen any of the physicians outlined in the Committee's July 3 correspondence. You did, however indicate, your willingness now to see such physicians as long as you did not have to choose them. While you previously indicated willingness to the Benefit Plan Review Committee to see physicians if it choose them and later failed to attend scheduled appointments with the selected physicians, the Committee is willing to agree to your request. Because of the Committee's requirement to respond to your appeal within the timeframe stated in the Agreement, however, it is not possible for you now to attend physician appointments without extending the stated deadline in the Agreement.

While the committee believes that it is in the mutual interest of the parties for you to attend an independent medical evaluation by both a neurologist and a psychiatrist, so that the Committee can further evaluate your claim, it is entirely your decision. Therefore, should you wish to attend the physician evaluations, you must return this letter to us by fax at (317) 433-8295 with your signature on or before noon (12:00p.m.) tomorrow, August 26, 2003, Should we received your written consent within the period provided, you would received a written communication from the Committee indicating the two physicians you must see and the dates for each evaluation., which would be at Lilly's expense.

If you continue to refuse to undergo the requested examinations, the Committee will be required to review your appeal without such information and may deny your requested based on you failure to comply with the terms of the plan or because it lacks necessary information to confirm your claimed disability.

Please let me know if you have any questions.

Sincerely,

Employee Benefits Committee

/s/ Charles A. Grandy
Charles A. Grandy

cc: Jesús Hernández Sánchez

I, Kenia Cintrón fully understand the meaning and extent of all the terms and obligations included in this letter, and I voluntarily and freely accept the same.

In Naguabo, Puerto Rico, this __ day of August 2003.

_____

Kenia Cintrón

APPENDIX BD

Certified Letter: 7002 0860 0008 6598 1637
Fax Numbers: (317) 433-6610
(317) 433-8295

August 25, 2003

To: Charles A. Grandy
Eli Lilly and Company
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, IN 46285-1773
Tel. (317) 433-2607
Fax. (317) 433-6610

Cc: John J. Purcell
Eli Lilly and Company
Employee Benefits Committee
Lilly Corporate Center
Indianapolis, IN 46285-1773
Tel. (317) 433-3081
Fax. (317) 433-8295

Today, we received a letter dated August 25, 2003 (by fax) from the Employee Benefits Committee (the Committee) and signed by Mr. Charles A. Grandy. The Committee intent to certified this letter as an Amendment to the Agreement signed by the parties. In the second paragraph of such letter (or amendment), the Committee states allegations, which are not correct.

1- Kenia has never refused to undergo to a medical evaluation as stated on section 6.02 of the Employee Disability Benefit Plan (the Plan).

2- On July 16, 2003 letter, Kenia did not questioned the Committee authority. Kenia just reported the discrepancies between the Agreement, signed by the parties, and the Committee requests. Also, stated that she will undergo to medical evaluation as stated on section 6.02(b) of the Plan.

3- Kenia has never imposed to the Committee additional conditions in order to comply with the Committee's request to undergo to medical evaluations. Kenia just request a questionnaire in order to complete any information that could be missing, from the physicians that have been attending her, and she might not known that was missing. This request was because the Committee never told her what specific information was missing or was needed to be informed, in order to fulfill the Committee requirements. It is Kenia's right to request any information, documentation or paperwork that can help her to properly submit any information requested by the Committee.

4- On Friday (August 22, 2003) Kenia received a phone call by a person who identified himself as Mr. Charlie Grandy (while Mr. John Purcell is identified and stated as the contact person in the Agreement). In Friday's conversation, Kenia informed to Mr. Charlie Grandy that she had not seen the physicians listed by the Committee because the Committee never informed her of any appointment to undergo to any physician. Kenia answered that nobody has contacted her after the letter she sent on July 16, 2003. In the same conversation, Kenia confirmed to Mr. Charlie Grandy that she has always agreed to undergo to medical evaluations only as stated on section 6.02(b) of the plan, which Mr. Charlie Grandy now

agreed if she approves the 30 days extension period, extension which is out of Plan and out of the Agreement signed by the parties.

5- After the Friday's conversation, Kenia sent a letter by fax and certified mail informing that, she still able to undergo to the physicians evaluation as stated on section 6.02 of the plan and as signed by the parties under the Agreement.

Now, Kenia received this letter sent by the Committee threatening her to accept and amendment with information that is not correct. Moreover, the Committee tries to blame and frame Kenia if she does not agree to accept the amendment.

It is imperative that the Committee recognizes that:

1- Kenia submitted the appeal on time on May 29, 2003 by fax and Express Mail.

2- The Committee (Mr. John Purcell) certified that has received the appeal fax and letter, on the letter dated June 5, 2003, stamped on June 6, 2003 and received on June 12, 2003.

3- The Committee (Mr. John Purcell) sent a letter dated July 3, 2003, stamped on July 7, 2003 and received on July 14, 2003 (42 – 46 days later), in which, the Committee tried to change the terms and conditions of Agreement, signed by the parties. In this letter, the Committee never notified Kenia of any appointment with the physicians nor complied with section 6.02(b) of the Plan.

4- Kenia responded on July 16, 2003 (2 days after the arrival), that she would undergo to medical evaluations only as stated in section 6.02 (b) of the Plan and signed by the parties in the Agreement.

5- Mr. Charles A. Grandy called Kenia on August 22, 2003 (85 days later) requiring an amendment of an additional extension period of 30 days, extension that is out of the Plan and out of Agreement signed by the parties.

6- The Committee failed again to comply with the Agreement by never contacted nor informed Kenia of any appointment with the physicians within the period agreed and signed by the parties. Neither expressed any concern nor requested any clarification regarding Kenia's letter dated July 16, 2003 until today (August 25, 2003).

It is important to state that the Committee cannot threaten, blame or frame Kenia for its fault. Kenia has been properly complying with the Agreement as signed by the parties. It is the Committee responsibility to comply with the Agreement as well. The Committee is who has been several times failing to comply with the Plan and the Agreement signed by the parties. It is also very important to state that Kenia has never refused to undergo to medical evaluations as stated in section 6.02(b) of the Plan and signed by the parties in the Agreement. Kenia still willing to undergo to medical evaluations as stated on sections 6.02(b) and 6.05(b) of the Plan and signed by the parties in the Agreement.

Based on the fact that:

1- The stated information in the letter (or amendment) dated August 25, 2003, is not correct;

2- There have been many misunderstanding between the parties;

3- The Committee has failed consistently and intentionally to comply with the Agreement, signed by the parties, trying to adversely affect Kenia's benefits;

4- The Committee has never shown to have any good faith in attend Kenia's claim fairly;

5- It is a shame how the Committee is requesting from Kenia to make a decision to accept and approve an Amendment with information that is not the correct one in less than 24 hours when, the Committee has not been capable to comply with the timeframe stated in the Agreement signed by the parties and also stated in their own Plan; and now is demanding and additional 30 days extension period.

6- We will not consent to allow anyone to threaten, blame or frame Kenia;

We have agreed that we will not approve the Amendment as written. Therefore, Kenia will continue to comply with the Agreement as stated and signed by the parties without any Amendment.

Respectfully,

/s/ Miguel A. García Méndez	/s/ Kenia M. Cintrón
Miguel A. García Méndez	Kenia M. Cintrón Parrilla

Number of pages including this cover sheet: 3

TRANSACTION REPORT

AUG-26-03 08:37 AM

FOR: KENIA M. CINTRON 8740025

SEND

DATE	START	RECEIVER	PAGES	TIME	NOTE
AUG-26	08:31 AM	13174336610	3	5'17"	OK

TRANSACTION REPORT

AUG-26-03 08:42 AM

FOR: KENIA M. CINTRON 8740025

SEND

DATE	START	RECEIVER	PAGES	TIME	NOTE
AUG-26	08:39 AM	13174338295	3	2'30"	OK

APPENDIX BE

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Eli Lilly and Company
Lilly Corporate Center
Indianapolis, Indianan 46285
U.S.A.

Phone 317 276 2000

August 27, 2003

BY FAX (787-874-0025) AND REGULAR MAIL

Ms. Kenia Cintrón
P.O. Box 388
Naguabo, Puerto Rico 00718-0388

Dear Ms. Cintron:

At its August 25, 2003 meeting the Eli Lilly and Company Employee Committee (the "EBC") reviewed your appeal dated May 29, 2003 of the denial by the Benefits Plan Review Committee (the "Committee") of your request for monthly benefit under The Lilly Extended Disability Plan (the "Plan"). Based on the information provided to the EBC, the EBC (1) was unable to verify your claimed disability; and (2) determine that you failed to provide necessary information to support your entitlement to disability benefits as required by the Plan.

As you may be aware, the Plan is a self-funded employee welfare benefit plan. The Plan is a component plan of "The Lilly Employee Welfare Plan and is governed by federal regulation under The Employee Retirement Income Security Act of 1994 ("ERISA"). The Employee Benefits Committee

is appointed by the Eli Lilly and Company Board of Directors to review claims under and administer this Plan.

The EBC reviewed the information provided in your appeal. The EBC upheld the Committee's pervious determination that you are ineligible for Plan benefits. Section 6.02(a) of the plan requires that you submit proof of your entitlement to disability benefits including: 1) the date on which the Employee's disability commenced; 2) the cause of the Disability; 3) any available Objective Medial Evidence of the Disability; 4) the nature and extend of the Disability; 5) the name and address of the Licensed Physician who is providing the Employee with regular care; for your claimed disability. Subsection 2.01(a)(5) of the Plan in relevant part defines "Disability" as "the inability of an employee to engage for remuneration of profit, in any occupation commensurate with the Employee's education, training and experience, provided that the inability results from an illness or accidental bodily injury that requires the Employee to be under regular care of a Licensed Physician". In evaluating the claim for disability benefits, section 6.02(b) of the Plan authorizes the EBC to "require an Employee to undergo examinations by a Licensed Physician or vocational expert chosen by the Employee Benefits Committee to determine the extent of any illness or injury for which the Employee makes a claim under the Plan. The Employee Benefits Committee may require an Employee to undergo such examinations as often as reasonably necessary to determine whether the Employee remains Disabled."

Because the EBC was unable to verify your claimed disability, your request for benefits was denied. Based on the information provided, the EBC agree with the Committee's findings that there appear to be several areas of poor

correlation between your reported symptoms, including the severity of your symptoms, and the diagnostic studies you provided. Specifically, you have complained of severe upper arm pain, neck pain, and back pain for several years. The severity of your symptoms, however are poorly correlated with diagnostic studies performed, X-Rays, CT Scans, bone scans and Doppler flow studies suggest mild degenerative disc disease without significant flow obstruction or nerve root compression. Such findings are not inconsistent with mild symptoms and/or the aging process. In addition, an emotional disease component is suggested by some evaluators but the extent of the disease is unclear as well as what effective interviews have been offered and your compliance with such recommendations.

In addition, the EBC also denied your request for EDL benefits because you failed to provide information necessary to verify your claimed disability as requested. By letter dated September 23, 2002, you were requested to undergo an independent medical evaluation by both a. neurologist and a psychiatrist to assist the Committee in completing its ongoing evaluation. After initially agreeing to undergo such evaluations by letter dated October 21, 2002, you did not appear at scheduled appointments and notified Lilly that you would not undergo such independent medical evaluations by letter dated November 8, 2002. Subsequently, the EBC requested that you undergo an independent medical evaluation by both a neurologist and a psychiatrist by letter dated July 3, 2003. Last Friday you confirmed that you have not seen any of the physicians identified. Instead by a letter dated July 16, 2003, you claimed that the Committee was modifying the Plan's requirements and questioned the EBC's authority to request an independent medical evaluation and

indicated that you would not comply with the Committee's request without imposing additional conditions. Following your conversation last Friday in which you now indicated a willingness to the EBC's review to allow sufficient time for you to see physicians. By letter dated August 26, however, you rejected that opportunity. Accordingly , the EBC also must deny your request for benefits for failure to comply with the term of the Plan.

Sincerely,

Employee Benefits Committee

/s/ John J. Purcell
John J. Purcell

cc: Jesus Hernandez Sanchez

APPENDIX BF

Certified Mail Number: 7002 0860 0008 6604 7905
Fax: (317) 433-8295
(787) 725-1112

Naguabo, PR
September 25, 2003

To: John J. Purcell
Eli Lilly and Company
Employee Benefits Committee
Mail Drop Code 1773
Lilly Corporate Center
Indianapolis, IN 46285-1773
Tel. (317) 276-3081
Fax. (317) 433- 8295

Cc: Jesus Hernández Sánchez
First Bank Building
Suite 806-810
1519 Ponce de Leon Avenue
San Juan. PR 00909
Tel. (787) 722-5414
Fax. (787) 725-1112

Guillermo Macari

From: Kenia M. Cintrón Parrilla
P.O. Box 388
Naguabo, PR 0O718-0388

Re: Request of Information

This is to request from the Lilly Employee Benefits Committee copies of all the documentation in connection to Mrs. Kenia M. Cintron disability and appeal claim determinations and, the identification of any medical or vocational expert whose advice was obtained for such determinations. In addition, we request the meaning of the abbreviation "Lab. Reg."

If you have any doubt please, do not hesitate to contact us.

Respectfully,

/s/ Miguel A. García Méndez
Miguel A. García Méndez

/s/ Kenia M. Cintrón
Kenia M. Cintrón Parrilla

TRANSACTION REPORT

SEP-25-03 04:04 PM

FOR: KENIA M. CINTRON 8740025

SEND

DATE	START	RECEIVER	PAGES	TIME	NOTE
SEP-26	08:31 AM	13174338295	3	43"	OK

7002 0860 0008 6604 7905

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(Domestic Mail Only; No Insurance Coverage Provided)

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Total Postage & Fees	$ 4.42

NAGUABO PR
Postmark Here
USPS

Sent To: John J. Purcell - Employee Benefits Commi[illegible]
Street, Apt. No.; or PO Box No.: Lilly Corporate Center
City, State, ZIP+4: Indianapolis, Indiana 46285

PS Form 3800, April 2002 — See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Eli Lilly and Company
Employee Benefits Committee
Attn. John J. Purcell
Mail Drop Code 1773
Lilly Corporate Center
Indianapolis, Indiana 46285

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X L. Haward ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 9/30/03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 0860 0008 6604 7905

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

APPENDIX BG

Federal Rules of Appellate Procedure And First Circuit Local Rules

Rule 4. Appeal as of Right-When Taken

(a) Appeal in a Civil Case

(1) **Time for Filling a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B),4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) **Multiple Appeals.** If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) **Effect of Motion on a Notice of Appeal.**

(A) If a party timely files in the district court any of the following motions under the Federal Rules of

civil procedures, the time to file an appeal runs for all the parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) **Appellant's Duty to Order.** Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) **Unsupported Finding or Conclusion.** If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) **Partial Transcript.** Unless the entire transcript is ordered:

(A) the appellant must — within the 10 days provided in Rule 10(b)(1) — file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of the order or certificate and the statement of the

issues, file and serve on the appellant designation of additional parts to be ordered; and

(C) unless within 10 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) **Payment.** At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection.

The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is

truthful, it — together with any additions that the district court may consider necessary to a full presentation of the issues on appeal — must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

Rule 11. Forwarding the Record

(b) Duties of Reporter and District Clerk.

(1) **Reporter's Duty to Prepare and File a Transcript.** The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date

of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

Rule 26. Computing and extending Time

(a) Computing time. The following rules apply in computing any period of time specified in these rules or any local rule, court order, or applicable statute:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendars days.

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or – if the act to be done is filing a paper in court – a day on which the weather or other conditions make the clerk's office inaccessible.

(4) As used in this rule, "legal holiday" means New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day,

Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President, Congress, or the state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

Local Rule 27. Motions

(a) Assent. Motions will not necessarily be allowed even though assented to.

(c) Summary Disposition At any time, on such notice as the court may order, on motion of appellee or sua sponte, the court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented. In the case of obvious error the court may, similarly, reverse. Motions for such relief should be promptly file when the occasion, appears, and must be accompanied by four copies of a memorandum or brief.

APPENDIX BH

Federal Rules of Civil Procedure

VII. Judgment

Rule 54. Judgments; Costs

(b) Judgment Upon Multiple Claims or Involving Multiple Parties.

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Rule 58. Entry of Judgment

(a) Separate Document

(1) Every judgment and amended judgment must be set forth on a separate document, but a separate document is not required for an order disposing of a motion:

(A) for judgment under Rule 50(b);

(B) to amend or make additional findings of fact under Rule 52(b);

(C) for attorney fees under Rule 54;

(D) for a new trial, or to alter or amend the judgment, under Rule 59; or

(E) for relief under Rule 60.

(b) Time of Entry.

Judgment is entered for purposes of these rules:

(1) if Rule 58(a)(1) does not require a separate document, when it is entered in the civil docket under Rule 79(a), and

(2) if Rule 58(a)(1) requires a separate document, when it is entered in the civil docket under Rule 79(a) and when the earlier of these events occurs:

(A) when it is set forth on a separate document, or

(B) when 150 days have run from entry in the civil docket under Rule 79(a).

(d) Request for Entry.

A party may request that judgment be set forth on a separate document as required by Rule 58(a)(1).

Rule 59. New trials; Amendment of Judgments

(e) Motion to Alter or Amend a Judgment.

Any motion to alter or amend a judgment shall be filed no later than 10 days after the entry of the judgment.

Rule 60. Relief from Judgment or Order

(a) Clerical Mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after

such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon

the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 79. Books and Records Kept by the Clerk and Entries Therein

(a) Civil Docket.

The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

(b) Civil Judgments and Orders.

The clerk shall keep, in such form and manner as the Director of the Administrative Office of the United States

Courts with the approval of the Judicial Conference of the United States may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

APPENDIX BJ

PART 2560: RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

Sec. 2560.503-1: Claims procedure.

(a) Scope and purpose. In accordance with the authority of sections 503 and 505 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act), 29 U.S.C. 1133, 1135, this section sets forth minimum requirements for employee benefit plan procedures pertaining to claims for benefits by participants and beneficiaries (hereinafter referred to as claimants). Except as otherwise specifically provided in this section, these requirements apply to every employee benefit plan described in section 4(a) and not exempted under section 4(b) of the Act.

(b) Obligation to establish and maintain reasonable claims procedures. Every employee benefit plan shall establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations (hereinafter collectively referred to as claims procedures). The claims procedures for a plan will be deemed to be reasonable only if--

(1) The claims procedures comply with the requirements of paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section, as appropriate, except to the extent that the claims procedures are deemed to comply with some or all of such provisions pursuant to paragraph (b)(6) of this section;

(2) A description of all claims procedures (including, in the case of a group health plan within the meaning of

paragraph (m)(6) of this section, any procedures for obtaining prior approval as a prerequisite for obtaining a benefit, such as preauthorization procedures or utilization review procedures) and the applicable time frames is included as part of a summary plan description meeting the requirements of 29 CFR 2520.102-3;

(3) The claims procedures do not contain any provision, and are not administered in a way, that unduly inhibits or hampers the initiation or processing of claims for benefits. For example, a provision or practice that requires payment of a fee or costs as a condition to making a claim or to appealing an adverse benefit determination would be considered to unduly inhibit the initiation and processing of claims for benefits. Also, the denial of a claim for failure to obtain a prior approval under circumstances that would make obtaining such prior approval impossible or where application of the prior approval process could seriously jeopardize the life or health of the claimant (e.g., in the case of a group health plan, the claimant is unconscious and in need of immediate care at the time medical treatment is required) would constitute a practice that unduly inhibits the initiation and processing of a claim;

(4) The claims procedures do not preclude an authorized representative of a claimant from acting on behalf of such claimant in pursuing a benefit claim or appeal of an adverse benefit determination. Nevertheless, a plan may establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a claimant, provided that, in the case of a

claim involving urgent care, within the meaning of paragraph (m)(1) of this section, a health care professional, within the meaning of paragraph (m)(7) of this section, with knowledge of a claimant's medical condition shall be permitted to act as the authorized representative of the claimant; and

(5) The claims procedures contain administrative processes and safeguards designed to ensure and to verify that benefit claim determinations are made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated claimants.

(6) In the case of a plan established and maintained pursuant to a collective bargaining agreement (other than a plan subject to the provisions of section 302(c)(5) of the Labor Management Relations Act, 1947 concerning joint representation on the board of trustees)--

(i) Such plan will be deemed to comply with the provisions of paragraphs (c) through (j) of this section if the collective bargaining agreement pursuant to which the plan is established or maintained sets forth or incorporates by specific reference--

(A) Provisions concerning the filing of benefit claims and the initial disposition of benefit claims, and

(B) A grievance and arbitration procedure to which adverse benefit determinations are subject.

(ii) Such plan will be deemed to comply with the provisions of paragraphs (h), (i), and (j) of this section (but will not be deemed to comply with paragraphs (c) through (g) of this section) if the collective bargaining agreement pursuant to which the plan is established or maintained sets forth or incorporates by specific reference a grievance and arbitration procedure to which adverse benefit determinations are subject (but not provisions concerning the filing and initial disposition of benefit claims).

(c) Group health plans. The claims procedures of a group health plan will be deemed to be reasonable only if, in addition to complying with the requirements of paragraph (b) of this section--

(1) (i) The claims procedures provide that, in the case of a failure by a claimant or an authorized representative of a claimant to follow the plan's procedures for filing a pre-service claim, within the meaning of paragraph (m)(2) of this section, the claimant or representative shall be notified of the failure and the proper procedures to be followed in filing a claim for benefits. This notification shall be provided to the claimant or authorized representative, as appropriate, as soon as possible, but not later than 5 days (24 hours in the case of a failure to file a claim involving urgent care) following the failure. Notification may be oral, unless written notification is requested by the claimant or authorized representative.

(ii) Paragraph (c)(1)(i) of this section shall apply only in the case of a failure that--

(A) Is a communication by a claimant or an authorized representative of a claimant that is received by a person or organizational unit customarily responsible for handling benefit matters; and

(B) Is a communication that names a specific claimant; a specific medical condition or symptom; and a specific treatment, service, or product for which approval is requested.

(2) The claims procedures do not contain any provision, and are not administered in a way, that requires a claimant to file more than two appeals of an adverse benefit determination prior to bringing a civil action under section 502(a) of the Act;

(3) To the extent that a plan offers voluntary levels of appeal (except to the extent that the plan is required to do so by State law), including voluntary arbitration or any other form of dispute resolution, in addition to those permitted by paragraph (c)(2) of this section, the claims procedures provide that:

(i) The plan waives any right to assert that a claimant has failed to exhaust administrative remedies because the claimant did not elect to submit a benefit dispute to any such voluntary level of appeal provided by the plan;

(ii) The plan agrees that any statute of limitations or other defense based on timeliness is tolled during the time that any such voluntary appeal is pending;

(iii) The claims procedures provide that a claimant may elect to submit a benefit dispute to such voluntary level of appeal only after exhaustion of the appeals permitted by paragraph (c)(2) of this section;

(iv) The plan provides to any claimant, upon request, sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed judgment about whether to submit a benefit dispute to the voluntary level of appeal, including a statement that the decision of a claimant as to whether or not to submit a benefit dispute to the voluntary level of appeal will have no effect on the claimant's rights to any other benefits under the plan and information about the applicable rules, the claimant's right to representation, the process for selecting the decisionmaker, and the circumstances, if any, that may affect the impartiality of the decisionmaker, such as any financial or personal interests in the result or any past or present relationship with any party to the review process; and

(v) No fees or costs are imposed on the claimant as part of the voluntary level of appeal.

(4) The claims procedures do not contain any provision for the mandatory arbitration of adverse benefit determinations, except to the extent that the plan or procedures provide that:

(i) The arbitration is conducted as one of the two appeals described in paragraph (c)(2) of this

section and in accordance with the requirements applicable to such appeals; and

(ii) The claimant is not precluded from challenging the decision under section 502(a) of the Act or other applicable law.

(d) Plans providing disability benefits. The claims procedures of a plan that provides disability benefits will be deemed to be reasonable only if the claims procedures comply, with respect to claims for disability benefits, with the requirements of paragraphs (b), (c)(2), (c)(3), and (c)(4) of this section.

(e) Claim for benefits. For purposes of this section, a claim for benefits is a request for a plan benefit or benefits made by a claimant in accordance with a plan's reasonable procedure for filing benefit claims. In the case of a group health plan, a claim for benefits includes any pre-service claims within the meaning of paragraph (m)(2) of this section and any post-service claims within the meaning of paragraph (m)(3) of this section.

(f) Timing of notification of benefit determination.

(1) In general. Except as provided in paragraphs (f)(2) and (f)(3) of this section, if a claim is wholly or partially denied, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 90 days after receipt of the claim by the plan, unless the plan administrator determines that special circumstances require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be

furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the benefit determination.

(2) Group health plans. In the case of a group health plan, the plan administrator shall notify a claimant of the plan's benefit determination in accordance with paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, as appropriate.

(i) Urgent care claims. In the case of a claim involving urgent care, the plan administrator shall notify the claimant of the plan's benefit determination (whether adverse or not) as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claim by the plan, unless the claimant fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the plan. In the case of such a failure, the plan administrator shall notify the claimant as soon as possible, but not later than 24 hours after receipt of the claim by the plan, of the specific information necessary to complete the claim. The claimant shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours, to provide the specified information. Notification of any adverse benefit determination pursuant to this paragraph

(f)(2)(i) shall be made in accordance with paragraph (g) of this section. The plan administrator shall notify the claimant of the plan's benefit determination as soon as possible, but in no case later than 48 hours after the earlier of--

(A) The plan's receipt of the specified information, or

(B) The end of the period afforded the claimant to provide the specified additional information.

(ii) Concurrent care decisions. If a group health plan has approved an ongoing course of treatment to be provided over a period of time or number of treatments--

(A) Any reduction or termination by the plan of such course of treatment (other than by plan amendment or termination) before the end of such period of time or number of treatments shall constitute an adverse benefit determination. The plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the adverse benefit determination at a time sufficiently in advance of the reduction or termination to allow the claimant to appeal and obtain a determination on review of that adverse benefit determination before the benefit is reduced or terminated.

(B) Any request by a claimant to extend the course of treatment beyond the period of time or number of treatments that is a claim

involving urgent care shall be decided as soon as possible, taking into account the medical exigencies, and the plan administrator shall notify the claimant of the benefit determination, whether adverse or not, within 24 hours after receipt of the claim by the plan, provided that any such claim is made to the plan at least 24 hours prior to the expiration of the prescribed period of time or number of treatments. Notification of any adverse benefit determination concerning a request to extend the course of treatment, whether involving urgent care or not, shall be made in accordance with paragraph (g) of this section, and appeal shall be governed by paragraph (i)(2)(i), (i)(2)(ii), or (i)(2)(iii), as appropriate.

(iii) Other claims. In the case of a claim not described in paragraphs (f)(2)(i) or (f)(2)(ii) of this section, the plan administrator shall notify the claimant of the plan's benefit determination in accordance with either paragraph (f)(2)(iii)(A) or (f)(2)(iii)(B) of this section, as appropriate.

(A) Pre-service claims. In the case of a pre-service claim, the plan administrator shall notify the claimant of the plan's benefit determination (whether adverse or not) within a reasonable period of time appropriate to the medical circumstances, but not later than 15 days after receipt of the

claim by the plan. This period may be extended one time by the plan for up to 15 days, provided that the plan administrator both determines that such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 15-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If such an extension is necessary due to a failure of the claimant to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information, and the claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information. Notification of any adverse benefit determination pursuant to this paragraph (f)(2)(iii)(A) shall be made in accordance with paragraph (g) of this section.

(B) Post-service claims. In the case of a post-service claim, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 30 days after receipt of the claim. This period may be extended one time by the plan for up to 15 days, provided that the plan administrator both determines that such an

extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 30-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If such an extension is necessary due to a failure of the claimant to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information, and the claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information.

(3) Disability claims. In the case of a claim for disability benefits, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the plan. This period may be extended by the plan for up to 30 days, provided that the plan administrator both determines that such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If, prior to the end of the first 30-day extension period, the administrator determines that, due to matters beyond the control of the plan, a decision cannot be rendered within that extension period, the period for making the determination may

be extended for up to an additional 30 days, provided that the plan administrator notifies the claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision. In the case of any extension under this paragraph (f)(3), the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

(4) Calculating time periods. For purposes of paragraph (f) of this section, the period of time within which a benefit determination is required to be made shall begin at the time a claim is filed in accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination accompanies the filing. In the event that a period of time is extended as permitted pursuant to paragraph (f)(2)(iii) or (f)(3) of this section due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

(g) Manner and content of notification of benefit determination.

(1) Except as provided in paragraph (g)(2) of this section, the plan administrator shall provide a claimant with written or electronic notification of any adverse benefit determination. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv). The notification shall set forth, in a manner calculated to be understood by the claimant --

(i) The specific reason or reasons for the adverse determination;

(ii) Reference to the specific plan provisions on which the determination is based;

(iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;

(iv) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review;

(v) In the case of an adverse benefit determination by a group health plan or a plan providing disability benefits,

(A) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the

adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request; or

(B) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

(vi) In the case of an adverse benefit determination by a group health plan concerning a claim involving urgent care, a description of the expedited review process applicable to such claims.

(2) In the case of an adverse benefit determination by a group health plan concerning a claim involving urgent care, the information described in paragraph (g)(1) of this section may be provided to the claimant orally within the time frame prescribed in paragraph (f)(2)(i) of this section, provided that a written or electronic notification in accordance with paragraph (g)(1) of this section is furnished to the claimant not later than 3 days after the oral notification.

(h) Appeal of adverse benefit determinations.

(1) In general. Every employee benefit plan shall establish and maintain a procedure by which a claimant shall have a reasonable opportunity to appeal an adverse benefit determination to an appropriate

named fiduciary of the plan, and under which there will be a full and fair review of the claim and the adverse benefit determination.

(2) Full and fair review. Except as provided in paragraphs (h)(3) and (h)(4) of this section, the claims procedures of a plan will not be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures--

(i) Provide claimants at least 60 days following receipt of a notification of an adverse benefit determination within which to appeal the determination;

(ii) Provide claimants the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits;

(iii) Provide that a claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(iv) Provide for a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(3) Group health plans. The claims procedures of a group health plan will not be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless, in addition to complying with the requirements of paragraphs (h)(2)(ii) through (iv) of this section, the claims procedures--

(i) Provide claimants at least 180 days following receipt of a notification of an adverse benefit determination within which to appeal the determination;

(ii) Provide for a review that does not afford deference to the initial adverse benefit determination and that is conducted by an appropriate named fiduciary of the plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual;

(iii) Provide that, in deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, the appropriate named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment;

(iv) Provide for the identification of medical or vocational experts whose advice was obtained on behalf of the plan in connection with a

claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination;

(v) Provide that the health care professional engaged for purposes of a consultation under paragraph (h)(3)(iii) of this section shall be an individual who is neither an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of any such individual; and

(vi) Provide, in the case of a claim involving urgent care, for an expedited review process pursuant to which--

(A) A request for an expedited appeal of an adverse benefit determination may be submitted orally or in writing by the claimant; and

(B) All necessary information, including the plan's benefit determination on review, shall be transmitted between the plan and the claimant by telephone, facsimile, or other available similarly expeditious method.

(4) Plans providing disability benefits. The claims procedures of a plan providing disability benefits will not, with respect to claims for such benefits, be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures comply with the requirements of paragraphs (h)(2)(ii) through (iv) and (h)(3)(i) through (v) of this section.

(i) Timing of notification of benefit determination on review.

(1) In general.

(i) Except as provided in paragraphs (i)(1)(ii), (i)(2), and (i)(3) of this section, the plan administrator shall notify a claimant in accordance with paragraph (j) of this section of the plan's benefit determination on review within a reasonable period of time, but not later than 60 days after receipt of the claimant's request for review by the plan, unless the plan administrator determines that special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 60-day period. In no event shall such extension exceed a period of 60 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the determination on review.

(ii) In the case of a plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(1)(i) of this section shall not apply, and, except as provided in paragraphs (i)(2) and (i)(3) of this section, the appropriate named fiduciary shall instead make a benefit determination no later

than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(2) Group health plans. In the case of a group health plan, the plan administrator shall notify a claimant of the plan's benefit determination on review in accordance with paragraphs (i)(2)(i) through (iii), as appropriate.

(i) Urgent care claims. In the case of a claim involving urgent care, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination by the plan.

(ii) Pre-service claims. In the case of a pre-service claim, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review within a reasonable period of time appropriate to the medical circumstances. In the case of a group health plan that provides for one appeal of an adverse benefit determination, such notification shall be provided not later than 30 days after receipt by the plan of the claimant's request for review of an adverse benefit determination. In the case of a group health plan that provides for two appeals of an adverse determination, such notification shall be provided, with respect to any one of such two appeals, not later than 15 days after receipt by the plan of the claimant's request for review of the adverse determination.

(iii) Post-service claims.

(A) In the case of a post-service claim, except as provided in paragraph (i)(2)(iii)(B) of this section, the plan administrator shall notify the claimant, in accordance with paragraph

(j) of this section, of the plan's benefit determination on review within a reasonable period of time. In the case of a group health plan that provides for one appeal of an adverse benefit determination, such notification shall be provided not later than 60 days after receipt by the plan of the claimant's request for review of an adverse benefit determination. In the case of a group health plan that provides for two appeals of an adverse determination, such notification shall be provided, with respect to any one of such two appeals, not later than 30 days after receipt by the plan of the claimant's request for review of the adverse determination.

(B) In the case of a multiemployer plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(2)(iii)(A) of this section shall not apply, and the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to

hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall notify the claimant in writing of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(3) Disability claims.

(i) Except as provided in paragraph (i)(3)(ii) of this section, claims involving disability benefits (whether the plan provides for one or two appeals) shall be governed by paragraph (i)(1) of this section, except that a period of 45 days shall apply instead of 60 days for purposes of that paragraph.

(ii) In the case of a multiemployer plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(3)(i) of this section shall not apply, and the

appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall notify the claimant in writing of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(4) Calculating time periods. For purposes of paragraph (i) of this section, the period of time within which a benefit determination on review is required to be made shall begin at the time an appeal is filed in

accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination on review accompanies the filing. In the event that a period of time is extended as permitted pursuant to paragraph (i)(1), (i)(2)(iii)(B), or (i)(3) of this section due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

(5) Furnishing documents. In the case of an adverse benefit determination on review, the plan administrator shall provide such access to, and copies of, documents, records, and other information described in paragraphs (j)(3), (j)(4), and (j)(5) of this section as is appropriate.

(j) Manner and content of notification of benefit determination on review. The plan administrator shall provide a claimant with written or electronic notification of a plan's benefit determination on review. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv). In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant--

(1) The specific reason or reasons for the adverse determination;

(2) Reference to the specific plan provisions on which the benefit determination is based;

(3) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(4) A statement describing any voluntary appeal procedures offered by the plan and the claimant's right to obtain the information about such procedures described in paragraph (c)(3)(iv) of this section, and a statement of the claimant's right to bring an action under section 502(a) of the Act; and

(5) In the case of a group health plan or a plan providing disability benefits--

(i) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided free of charge to the claimant upon request;

(ii) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a

statement that such explanation will be provided free of charge upon request; and

(iii) The following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."

(k) Preemption of State law.

(1) Nothing in this section shall be construed to supersede any provision of State law that regulates insurance, except to the extent that such law prevents the application of a requirement of this section.

(2) (i) For purposes of paragraph (k)(1) of this section, a State law regulating insurance shall not be considered to prevent the application of a requirement of this section merely because such State law establishes a review procedure to evaluate and resolve disputes involving adverse benefit determinations under group health plans so long as the review procedure is conducted by a person or entity other than the insurer, the plan, plan fiduciaries, the employer, or any employee or agent of any of the foregoing.

(ii) The State law procedures described in paragraph (k)(2)(i) of this section are not part of the full and fair review required by section **503** of the Act. Claimants therefore need not exhaust such State law procedures prior to bringing suit under section 502(a) of the Act.

(l) Failure to establish and follow reasonable claims procedures. In the case of the failure of a plan to

establish or follow claims procedures consistent with the requirements of this section, a claimant shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.

(m) Definitions. The following terms shall have the meaning ascribed to such terms in this paragraph (m) whenever such term is used in this section:

(1) (i) A "claim involving urgent care" is any claim for medical care or treatment with respect to which the application of the time periods for making non-urgent care determinations--

(A) Could seriously jeopardize the life or health of the claimant or the ability of the claimant to regain maximum function, or,

(B) In the opinion of a physician with knowledge of the claimant's medical condition, would subject the claimant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim.

(ii) Except as provided in paragraph (m)(1)(iii) of this section, whether a claim is a "claim involving urgent care" within the meaning of paragraph (m)(1)(i)(A) of this section is to be determined by an individual acting on behalf of the plan applying the judgment of a prudent layperson who possesses an average knowledge of health and medicine.

(iii) Any claim that a physician with knowledge of the claimant's medical condition determines is a "claim involving urgent care" within the meaning of paragraph (m)(1)(i) of this section shall be treated as a "claim involving urgent care" for purposes of this section.

(2) The term "pre-service claim" means any claim for a benefit under a group health plan with respect to which the terms of the plan condition receipt of the benefit, in whole or in part, on approval of the benefit in advance of obtaining medical care.

(3) The term ``post-service claim'' means any claim for a benefit under a group health plan that is not a pre-service claim within the meaning of paragraph (m)(2) of this section.

(4) The term ``adverse benefit determination'' means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(5) The term "notice" or ``notification'' means the delivery or furnishing of information to an individual in a manner that satisfies the standards of 29 CFR 2520.104b-1(b) as appropriate with respect to material required to be furnished or made available to an individual.

(6) The term ``group health plan'' means an employee welfare benefit plan within the meaning of section 3(1) of the Act to the extent that such plan provides ``medical care'' within the meaning of section 733(a) of the Act.

(7) The term ``health care professional'' means a physician or other health care professional licensed, accredited, or certified to perform specified health services consistent with State law.

(8) A document, record, or other information shall be considered "relevant" to a claimant's claim if such document, record, or other information

(i) Was relied upon in making the benefit determination;

(ii) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination;

(iii) Demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (b)(5) of this section in making the benefit determination; or

(iv) In the case of a group health plan or a plan providing disability benefits, constitutes a statement of policy or guidance with respect to

the plan concerning the denied treatment option or benefit for the claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination.

(n) Apprenticeship plans. This section does not apply to employee benefit plans that solely provide apprenticeship training benefits.

(o) Applicability dates.

(1) Except as provided in paragraph (o)(2) of this section, this section shall apply to claims filed under a plan on or after January 1, 2002.

(2) This section shall apply to claims filed under a group health plan on or after the first day of the first plan year beginning on or after July 1, 2002, but in no event later than January 1, 2003.

(5)

No. 04-1367

Supreme Court, U.S.
FILED
JUL 8 - 2005
OFFICE OF THE CLERK

In The

Supreme Court of the United States

KENIA MARITZA CINTRÓN PARRILLA, ET AL,

Pro Se Petitioners,

v.

ELI LILLY INDUSTRIES, INC., ET AL,

Respondents.

On a Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit

PETITION FOR REHEARING

RECEIVED
JUL 1? 2005
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SUPREME COURT, U.S.

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QUESTIONS PRESENTED

1. Whether an interlocutory judgment and an interlocutory order have to be appealed before the final judgment, when they require further action and are directly related to the final judgment, in light of the 28 USC sections 1291 and 1292, USCA Rule 54, USCA Rule 58, USCA Rule 4.

2. Whether a failure to comply with a binding settlement agreement as can be enforce redress or obtain any other remedy under the statues and/or applicable laws in light of Contract and Tort Law, Civil Rights Act, 42 USC §§1981, 1983 and 1988.

3. What standard of review is used when a fiduciary or plan administrator failed to comply with the terms and procedures under the disability benefits plan and did not give full and fair evaluation to a disability claim in light of 29 USC §§1001, 1022, 1132, 1133 and 29 CFR §2560.503-1, among others, pursuant to ERISA.

4. Can plan administrator or fiduciary request an amendment to the disability benefits plan as a condition to determine claimant's disability benefits?

PARTIES

As per stated in the Second Amended Complaint filed in the District Court Docket (D.D.) Number 42, the Petition for Writ of Certiorari ("Petition") and the Petitioners Reply to Brief in Opposition (Reply):

Plaintiffs-Petitioners

1. Kenia M. Cintrón Parrilla ("Mrs. Cintrón"), worked as an employee for Eli Lilly del Caribe, Inc., (before named Eli Lilly Industries, Inc.), Puerto Rico Branch, a subsidiary of Eli Lilly Industries, Inc. ("Lilly" or "Eli Lilly"), for approximately 20 years, as a chemist and senior quality assurance representative. As a Lilly employee Mrs. Cintrón is a participant in all of Lilly's E.R.I.S.A. plans and is entitled to the other employee benefits.

2. Miguel A. García Mendez ("Mr. García") is the husband of Kenia M. Cintrón Parrilla, and together they form a legal conjugal partnership.

Defendants-Respondents

3. Eli Lilly Industries, Inc. Health, and Welfare and Disability Plan, and/or Eli Lilly Puerto Rico Extended Disability Plan (the "Lilly Plan"), is an employee welfare benefit plan, and those terms are defined in Section 3 (1) and (3) of E.R.I.S.A., 29 U.S.C. sec. 1002 (1) and (3), and thus subject to the provisions of E.R.I.S.A., 29 U.S.C. §§ 1001 et seq. The Lilly Plan covers employees and former employees of Eli Lilly Industries, Inc. and/or Eli Lilly del Caribe, Inc., Puerto Rico Branch, and hence it covers the Plaintiff-Petitioner Kenia M. Cintrón Parrilla.

4. Eli Lilly del Caribe, Inc. and/or Eli Lilly Industries, Inc., ("Lilly" or "Eli Lilly"), is a private corporation doing

business in Puerto Rico, with its main business office located in Carolina, Puerto Rico, and it is the administrator and/or fiduciary or trustee of the Lilly Plan for its Employees or former employees in Puerto Rico.

5. Company X is the health, welfare and disability plan of the Eli Lilly employees.

6. Company Y is the administrator and/or fiduciary or trustee of the health, welfare and disability plan of the Eli Lilly employees, which is either natural or juridical person.

7. Company A is the Eli Lilly Puerto Rico Employees Welfare Plan.

8. Company B is the administrator and/or fiduciary or trustee of the Eli Lilly Puerto Rico Employee Welfare Plan.

9. Company C is the Retirement Plan of Eli Lilly Industries Inc. and/or Eli Lilly del Caribe, Inc.

10. Company D is the administrator and fiduciary or trustee of the Retirement Plan of Eli Lilly Industries, Inc., and/or Lilly del Caribe, Inc.

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GROUNDS FOR THE PETITION FOR REHEARING

A. The Court of Appeals For The First Circuit Erred When Dismissed As Untimely Petitioners' Appeal For Judgment And Orders

The Court of Appeals dismissed as untimely August 14, 2002 Judgment, July 1, 2003, November 24, 2003, December 19, 2003 Orders. See District Docket ('D.D") #77, #88, #95, #98; First Circuit Court of Appeals General Docket date ("AD"): 10/1/04; Petition for Writ of Certiorari ("Petition"), App.1-9;

August 2002 Judgment states: "The case is closed, subject to reopening for the limited review contemplated by the parties.", pursuant to a Joint motion for a partial dismissal, with the exception of Petitioner's long-term disability claim pursuant to section 502(a) of ERISA, allowing a judicial review. See, D.D. #77, #75, (Petition, App.5, 128).

July 2003 Order states: "The settlement agreement requires full exhaustion of Eli Lilly's Disability Plan procedures. Until this is accomplished, the court will not consider relieving any party from the term of the settlement." pursuant to a motion due to Respondent breach of agreement See D.D. #88 (Petition, App. 7).

Pursuant to 28USC §§1291 and 1292(b) the courts of appeals shall have jurisdiction of appeals from 'final decisions'. Also, 28USCA Rule 54(a) states: ""Judgment" ... includes a decree and any order from which an appeal lies." and 28USCA Rule 54(b) states:

> "any order, ...which adjudicates fewer than all claims or rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, ...is subject to revision at any time before

the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties"

See Rehearing, App. 32, 33, 34, 63.

28USCA Rule 54, Notes of Advisory Committee on Rules – 1946 Amendment, states: "The historic rule in the federal courts has always prohibited piecemeal disposal of litigation and permitted appeals only from final judgments except in those special instances covered by statute.", citing Hohorst v. Hamburg-American Packet Co. (1893) 148 U.S. 262; Rexford v. Brunswick-Balke-Collender Co. (1913) 228 U.S. 339; Collins v. Miller (1920) 252 U.S. 364. See Rehearing, App.64.

Hence, August 2002 Judgment and July 2003 Order were 'interlocutory' decisions, not 'final' decisions, thus were not appealable until final a judgment was filed, since both are 'related' and required further actions. (See definitions for 'interlocutory' and 'final' decisions in this Rehearing, App.1)

28USCA Rule 58 (a)(2)(A)(iii) states: "Subject to Rule 54(b): unless the court orders otherwise, the clerk must without waiting the court's direction, promptly prepare, sign, and enter the judgment when: the court denies all relief." See Rehearing App.67. Also, 28USCA Rule 58 Committee Notes on Rules – 2002 Amendment states: "Rule 54(b) which expressly permits revision of all orders not made final under Rule 54(b) "at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."." See Rehearing, App.73. See also, 28USCA Rule 18 and the Notes of Advisory Committee on Rule and Amendments. See Rehearing, App.58-62.

November 24, 2003 Order states only the word "Denied", pursuant to a timely filed Petitioners' motion for Request for Review, which included the August 2002 Judgment and July

2003 Order, after the "full exhaustion" of the procedures for the Disability Plan and the Agreement, as required. In addition, the Request for Review requested to relieve Petitioner of her obligations due to breach of agreement by Respondents, among others and enclosed a copy of the July 2003 Order identified as Exhibit 20. See D.D. #90 (Petition, App.163, 443, 444). Thus, the time to file reconsideration for August 2002 Judgment, July 2003 and November 2003 Orders started to run on November 24, 2003.

Since the November 2003 Order had no reason for denial Petitioners did not have a well understanding of the judicial review, if any, in order to adequately file reconsideration or appeal. See D.D. #95 (Petition, App.8).

The December 2003 Order states: "The reasons appear from the record and are summarized in docket 93", pursuant to a timely filed Petitioners' motion for reconsideration under Rule 59(e) and requesting the reasons for Request for Review denial ("Reconsideration") for the November 2003 Order. This December 2003 Order was not a final judgment because only addressed the reasons for the Request of Review denial but did not address the Reconsideration. See D.D. #98 (Petition, App.9).

Pursuant to 28USCA Rule 60(a), 28 USCA Rule 58(b) and 58(d), 28USCA 59(e), 28USCA 4(a)(4) and 4(a)(7), Petitioners filed a timely motion requesting the Reconsideration to be denied or granted due to lack of ruling See D.D. #99 (Petition App.480). 28USCA Rule 60(a):

> "Clerical mistakes in judgments, orders … and errors therein arising from oversight or omission may be corrected by the court its own initiative or on the motion of any party and after such notice, if any as the court orders. During the pendency of an appeal,

> the mistakes may be corrected before the appeal is docketed in the appellate co[illegible]"

See Rehearing, App.76. Also, 28USCA Rule 58(d) states: "A party may request that judgment be set forth on a separate document as required by Rule 58(a)(1)." See Rehearing, App.67. Also, 28USCA Rule 58(a)(1) and 28USCA Rule 4(a)(7) state that the time to file an appeal start to run when the earlier of these two events occurs, when judgment or order is set forth on a separate document or when 150 days have run from entry of the judgment or order in the civil docket under Rule 79(a). See Rehearing, App.67, 44.

28USCA Rule 58, Notes of Advisory Committee on Rules – 1963 Amendment states:

> "Hitherto some difficulty has arisen, chiefly where the court has written an opinion or memorandum containing some apparently directive or dispositive words, e.g., "the plaintiff's motion [for summary judgment] is granted," see United States v. F. & M. Schaefer Brewing Co., 356 U.S. 227, 229, 78 S.Ct. 674, 2 L.Ed.2d 721 (1958). Clerks on occasion have viewed these opinions or memoranda as being in themselves a sufficient basis for entering judgment in the civil docket as provided by Rule 79(a). However, where the opinion or memorandum has not contained all the elements of a judgment, or where the judge has later signed a formal judgment, it has become a matter of doubt whether the purported entry of judgment was effective, starting the time running for postverdict motions and for the purpose of appeal."

See Rehearing, App.69. Also, 28USCA Rule 58, Committee Notes on Rules – 2002 Amendment states: "The new provision allowing any party to move for entry of judgment

on a separate document will protect all needs for prompt commencement of the periods for motions, appeals, and execution or other enforcement." See Rehearing, App.73.

28USCA Rule 4, Committee Notes on Rules – 1963 Amendment states

> "New Rule 4(a)(7)(B) is intended both to codify the Supreme Court's holding in Mallis and to make clear that the decision whether to waive the requirement that the judgment or order be set forth on a separate document is the appellant's alone. It is, after all, the appellant who needs a clear signal as to when the time to file a notice of appeal has begun to run."

And, "... potential appellants need a clear signal that the time to appeal has begun to run, so that they do not unknowingly forfeit their rights." See Rehearing, App.53, 55.

The first February 25, 2004 Order states: "The motion for reconsideration has been properly documented and denied." pursuant to the timely motion for the Reconsideration to be denied or granted. This is the final order for the Reconsideration. See D.D. #101 (Petition, App.10)

The second February 25, 2004 Order, finding as moot the motion for extension of time to hire a new attorney and to file a second reconsideration and/or to appeal, states: "This case is close for all purposes." See D.D. #102 (Petition, App.11).

Thus, the appeal for the August 2002 Judgment, July 2003, November 2003, December 2003 and February 2004 Orders were timely filed on March 22, 2004, pursuant to 28USC §§1291 and 1292; 28USCA Rule 4(a)(4) and 4(a)(7); 28USCA Rule 54(a) and (b); 28USCA Rule 58(a)(1), (b) and (d) 28USCA Rule 59(e); 28USCA Rule 60(a). See D.D #103.

B. The Court Of Appeals For The First Circuit Erred When Affirmed The District Court Orders

The Court of Appeals for the First Circuit affirmed both February 2004 Orders based on misconstruction of the facts. The First February Order denying the Reconsideration was erroneously reviewed as a second reconsideration instead of as a final decision for the only Reconsideration that was ever filed. The Court of Appeals misconstrued the Petitioners' request due to a lack of ruling as a second reconsideration. This circumstance was elucidate above under Grounds for the Petition for Rehearing, A.

The second February 2004 Order denying the extension of time was also erroneously misconstrued as an untimely and inexcusable neglect. This motion was even filed before the final judgment of the case was filed. This circumstance was also elucidate above under Grounds for the Petition for Rehearing, A. The main reason to appeal of this motion is because it states: "This case is close for all purposes.", denying to Petitioners the opportunity to appeal.

C. Respondents Failed And Refuse To Comply With The Agreement, US Code, Code Of Federal Regulations, Pursuant To ERISA and The Civil Rights Act

Mrs. Cintrón's filed her claim for 'retroactive disability benefits effective on May 1998' to the Eli Lilly and Company Disability Benefits Committee ("Review Committee" and "Appeal Committee") in compliance with the terms of the Agreement, the Eli Lilly and Company Disability Plan ("Plan"); 29USC §1132, section 502(a) of ERISA; 29CFR 2560.503-1. The receipt of the initial claim was confirmed on August 16, 2002 by Mr. John J. Purcell, designated contact person. See D.D. #90 (Petition, 154-444); Respondents' Brief in Opposition ("Opposition"), 20a-58a; Rehearing App.2-31, 99-110.

29CFR §2560.503-1(b)(5) states: "The claims procedures contain administrative processes and safeguards designed to ensure and to verify that benefit claim determinations are

made in accordance with governing plan documents". Also, 29CFR §2560.503-1(e) states: "a claim for benefits is a request for a plan benefit or benefits made by a claimant in accordance with a plan's reasonable procedure for filing benefit claims." In addition, 29CFR 2560.503-1(f)(3) states: "the plan administrator shall notify the claimant ... the plan's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the plan." And, 29CFR 2560.503-1(f)(4) states: "the period of time within which a benefit determination is required to be made shall begin at the time a claim is filed in accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination accompanies the filing." See Opposition, 51a, 52a, 54a, 55a; Rehearing, App.4, 8, 13, 14.

The 45-day determination period for the Review Committee to render a decision expired on September 30, 2002. The Review Committee did not render a decision and did not request any time extension within the initial 45-day determination period. Respondents requested two time extensions after the 45-day determination period had expired, October 2, 2002 and October 28, 2002, in both alleging reasons out of their control. In addition, Respondents changed the definition of the claim filling date to '45 days after provide relevant information to render a decision'. Respondent change the 45-day period to expire on October 3, 2002 because Mrs. Cintrón submitted information received on August 19, 2002. Also, Respondents required Mrs. Cintrón to make physician selections to undergo to independent medical evaluations (IME's) from a list of physicians unknown to her. Neither the request for physician selections nor the IME's are contemplated in any part of the Agreement or the Plan. All these Respondents arbitrarily and

capriciously changes made to cover up their failure to follow and comply terms of the Agreement and the Plan, trying to put the burden on Petitioners alleging that they were given to Mrs. Cintrón the opportunity to select the physicians she preferred. Moreover, Respondents failed again to notify Mrs. Cintrón its denial determination within the 105-day period that was not supposed to be granted. Said determination period expired on November 29, 2002, and the denial letter, dated December 2, 2002, was sent postmarked December 6, 2002, and received on December 10, 2002. Contrary to the Agreement, par. 7, pags. 9, and sections 6.02(b), 6.05(a) of the Plan. See D.D. #90 (Petition, 154-444)

29CFR §2560.503-1(c)(3)(iv) states: "The plan provides to any claimant, ..., sufficient information relating to the ... appeal to enable the claimant to make an informed judgment", also states, "the claimants right to representation, the process for selecting the decisionmaker, and the circumstances, ..., that may affect the impartiality of the decisionmaker, such as any financial or personal interests in the result or any past or present relationship with any party to the review process". 29CFR §2560.503-1(h)(2)(ii) states: "Provide claimants the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits." In addition, 29CFR §2560.503-1(h)(2)(iii) states: "Provide that a claimant shall be provided, ..., reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits." See Rehearing, App.7, 16, 17.

In several occasions, Petitioners requested information to both Committees to clarify her doubts and of the specific additional information that had been prevented them to verify her disability since her the disability claim was retroactive to May 1998. Mainly, because it is not feasible for a physician

to efficiently determine if Mrs. Cintrón was disabled since 1998 unless he/she had evaluated her before. But no response was ever received. Despite the efforts that Mrs. Cintrón made requesting information to perfect her disability claim, the only information given to her were letters requesting IME's and physician selections, and the denial letters, based on subjective interpretations. For example, Respondents alleged that the pain that she feels has poor correlation with some medical selected studies, such as X- rays, CT scans, MRI's. Said studies can detect medical conditions but can not determine the intensity of the pain. However, the studies that proof her disabling conditions and more efficiently evaluate the level of pain such as, Nerve Conduction Velocities and Electromyographic studies, were not considered the by none of the Committees. See D.D. #90 (Petition 154-444).

29CFR §2560.503-1(b)(1) states: "The claims procedures for a plan will be deemed to be reasonable only if …comply with the requirements of paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section". Also, 29CFR §2560.503-1(b)(3) states: "The claims procedures do not contain any provision, and are not administered in a way, that unduly inhibits or hampers the initiation or processing of claims for benefits.". 29CFR §2560.503-1(h)(2)(iv) states: "Provide for a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination." See Rehearing, App.2, 3, 17.

Both Committees refused to supply Mrs. Cintrón the specific information required to fulfill her claim and imposed as a condition for the claim determination to make physicians selections and to undergo to IME's. Moreover, Respondents, deliberately misread Mrs. Cintrón's request for a form or

questionnaire, as a guide to supply the required information, and her concern of the procedure changes, as an act against the Committee and a refusal to undergo medical evaluations. Even more, the Appeal Committee purposely delayed the process for more than 39 days to force Mrs. Cintrón to sign an amendment and imposed it as a condition for her claim determination. Furthermore, the Appeal Committee denied Mrs. Cintrón's disability claim because she did not sign the amendment and the denial. Also, the denial letter did not comply with the requirements of 29CFR §2560.503-1(j) and the Plan. See D.D. #90, Opposition; 56a, 57a; Rehearing, 25.

CONCLUSION

Pursuant to the Agreement, paragraph 17, page 11, the performances of the promises of each party are expressly contingent upon the fulfillment and satisfaction of the obligation of the other party as set forth in the Agreement. Respondents did not comply with any of the terms, in violation of 29CFR §2560.503-1; 28USC §§1343(a) and 1331, 1367; 29USC §§1001, 1022, 1024(b), 1025, 1109, 1131, 1132(a) and (c), §1133, 1140; and 42USC §§1981, 1983, 1988. Thus, Petitioners are entitled to redress such violations, enforce any provision of the terms of the Plan and the Agreement or any other equitable and/or legal relief or action in accordance to any statute or applicable law. See Rehearing, App.2-31, 35-38, 82-87, 90-93, 95- 104, 111-118.

Therefore, Petitioners very respectfully request to this Honorable Supreme Court to grant this Petition for Rehearing for a petition for writ of certiorari.

Respectfully submitted,

Kenia M. Cintrón Parrilla

Miguel A. García Méndez

No. 04-1367

In The

Supreme Court of the United States

KENIA MARITZA CINTRÓN PARRILLA, ET AL,

Pro Se Petitioners

v.

ELI LILLY INDUSTRIES, INC., ET AL,

Respondents

CERTIFICATION

We, Kenia M. Cintrón Parrilla and Miguel A. García Méndez, do certify that as required by the Supreme Court Rule 44, we are presenting in good faith and not for delay the **PETITION FOR REHEARING,** for a Petition for Writ of Certiorari, that is restricted to intervene circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

Respectfully submitted, this 8th day of July of 2005, in Naguabo, Puerto Rico.

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Black's Law Dictionary
(Abridged Seventh Edition, 2000)

collateral–order doctrine – A doctrine allowing appeal from an interlocutory order that conclusively determines an issue wholly separate from the merits of the action and effectively unreviewable on appeal from a final judgment. – Also termed Cohen doctrine (fr. *Cohen v. Beneficial Indus. LoanCorp.*, 337 U.S. 541, 69 S.Ct. 1221 (1949)). See appealable decision under DECISION. (pag. 210)

final judgment – A court's last action that settles the rights of the parties and disposes of all the issues in controversy, except for the award of cost and enforcement of the judgment. – Also termed final appealable judgment; final decision; final decree; determinative judgment; final appealable order. (pag. 679)

final order – An order that it dispositive of the entire case. See final judgment under JUDGMENT. (pag. 899)

interlocutory judgment – An intermediate judgment that determines a preliminary or subordinate point or plea but does not finally decide the case. – Also termed interlocutory decree. (pag. 679)

interlocutory order – An order that relates to some intermediate matter in the case; any order other than a final order. • Most interlocutory others are not appealable until the case is fully resolved. – Also termed interlocutory decision; interim order; intermediate order. But by rule or statute, most jurisdictions allow some types of interlocutory orders to be immediately appealed. – Also termed interlocutory decision; interim order; intermediate order. See appealable decision under DECISION; COLLATERAL–ORDER DOCTRINE. (pag. 899)

29 CFR §2560.503-1

Title 29 – Labor

Chapter XXV – Pension And Welfare Benefits Administration

Part 2560: Rules And Regulations For Administration And Enforcement

Sec. 2560.503-1: Claims procedure.

(a) Scope and purpose. In accordance with the authority of sections 503 and 505 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act), 29 U.S.C. 1133, 1135, this section sets forth minimum requirements for employee benefit plan procedures pertaining to claims for benefits by participants and beneficiaries (hereinafter referred to as claimants). Except as otherwise specifically provided in this section, these requirements apply to every employee benefit plan described in section 4(a) and not exempted under section 4(b) of the Act.

(b) Obligation to establish and maintain reasonable claims procedures. Every employee benefit plan shall establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations (hereinafter collectively referred to as claims procedures). The claims procedures for a plan will be deemed to be reasonable only if--

(1) The claims procedures comply with the requirements of paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section, as appropriate, except to the extent that the claims procedures are deemed to comply with some or all of such provisions pursuant to paragraph (b)(6) of this section;

(2) A description of all claims procedures (including, in the case of a group health plan within the meaning of paragraph (m)(6) of this section, any procedures for obtaining prior approval as a prerequisite for obtaining a benefit, such as preauthorization procedures or utilization review procedures) and the applicable time frames is included as part of a summary plan description meeting the requirements of 29 CFR 2520.102-3;

(3) The claims procedures do not contain any provision, and are not administered in a way, that unduly inhibits or hampers the initiation or processing of claims for benefits. For example, a provision or practice that requires payment of a fee or costs as a condition to making a claim or to appealing an adverse benefit determination would be considered to unduly inhibit the initiation and processing of claims for benefits. Also, the denial of a claim for failure to obtain a prior approval under circumstances that would make obtaining such prior approval impossible or where application of the prior approval process could seriously jeopardize the life or health of the claimant (e.g., in the case of a group health plan, the claimant is unconscious and in need of immediate care at the time medical treatment is required) would constitute a practice that unduly inhibits the initiation and processing of a claim;

(4) The claims procedures do not preclude an authorized representative of a claimant from acting on behalf of such claimant in pursuing a benefit claim or appeal of an adverse benefit determination. Nevertheless, a plan may establish reasonable procedures for determining whether an individual has been authorized to act on

behalf of a claimant, provided that, in the case of a claim involving urgent care, within the meaning of paragraph (m)(1) of this section, a health care professional, within the meaning of paragraph (m)(7) of this section, with knowledge of a claimant's medical condition shall be permitted to act as the authorized representative of the claimant; and

(5) The claims procedures contain administrative processes and safeguards designed to ensure and to verify that benefit claim determinations are made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated claimants.

(6) In the case of a plan established and maintained pursuant to a collective bargaining agreement (other than a plan subject to the provisions of section 302(c)(5) of the Labor Management Relations Act, 1947 concerning joint representation on the board of trustees)--

(i) Such plan will be deemed to comply with the provisions of paragraphs (c) through (j) of this section if the collective bargaining agreement pursuant to which the plan is established or maintained sets forth or incorporates by specific reference--

(A) Provisions concerning the filing of benefit claims and the initial disposition of benefit claims, and

(B) A grievance and arbitration procedure to which adverse benefit determinations are subject.

(ii) Such plan will be deemed to comply with the provisions of paragraphs (h), (i), and (j) of this section (but will not be deemed to comply with paragraphs (c) through (g) of this section) if the collective bargaining agreement pursuant to which the plan is established or maintained sets forth or incorporates by specific reference a grievance and arbitration procedure to which adverse benefit determinations are subject (but not provisions concerning the filing and initial disposition of benefit claims).

(c) Group health plans. The claims procedures of a group health plan will be deemed to be reasonable only if, in addition to complying with the requirements of paragraph (b) of this section--

(1) (i) The claims procedures provide that, in the case of a failure by a claimant or an authorized representative of a claimant to follow the plan's procedures for filing a pre-service claim, within the meaning of paragraph (m)(2) of this section, the claimant or representative shall be notified of the failure and the proper procedures to be followed in filing a claim for benefits. This notification shall be provided to the claimant or authorized representative, as appropriate, as soon as possible, but not later than 5 days (24 hours in the case of a failure to file a claim involving urgent care) following the failure. Notification may be oral, unless written notification is requested by the claimant or authorized representative.

(ii) Paragraph (c)(1)(i) of this section shall apply only in the case of a failure that--

(A) Is a communication by a claimant or an authorized representative of a claimant that is received by a person or organizational unit customarily responsible for handling benefit matters; and

(B) Is a communication that names a specific claimant; a specific medical condition or symptom; and a specific treatment, service, or product for which approval is requested.

(2) The claims procedures do not contain any provision, and are not administered in a way, that requires a claimant to file more than two appeals of an adverse benefit determination prior to bringing a civil action under section 502(a) of the Act;

(3) To the extent that a plan offers voluntary levels of appeal (except to the extent that the plan is required to do so by State law), including voluntary arbitration or any other form of dispute resolution, in addition to those permitted by paragraph (c)(2) of this section, the claims procedures provide that:

(i) The plan waives any right to assert that a claimant has failed to exhaust administrative remedies because the claimant did not elect to submit a benefit dispute to any such voluntary level of appeal provided by the plan;

(ii) The plan agrees that any statute of limitations or other defense based on timeliness is tolled during the time that any such voluntary appeal is pending;

(iii) The claims procedures provide that a claimant may elect to submit a benefit dispute to such voluntary level of appeal only after exhaustion of

the appeals permitted by paragraph (c)(2) of this section;

(iv) The plan provides to any claimant, upon request, sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed judgment about whether to submit a benefit dispute to the voluntary level of appeal, including a statement that the decision of a claimant as to whether or not to submit a benefit dispute to the voluntary level of appeal will have no effect on the claimant's rights to any other benefits under the plan and information about the applicable rules, the claimant's right to representation, the process for selecting the decisionmaker, and the circumstances, if any, that may affect the impartiality of the decisionmaker, such as any financial or personal interests in the result or any past or present relationship with any party to the review process; and

(v) No fees or costs are imposed on the claimant as part of the voluntary level of appeal.

(4) The claims procedures do not contain any provision for the mandatory arbitration of adverse benefit determinations, except to the extent that the plan or procedures provide that:

(i) The arbitration is conducted as one of the two appeals described in paragraph (c)(2) of this section and in accordance with the requirements applicable to such appeals; and

(ii) The claimant is not precluded from challenging the decision under section 502(a) of the Act or other applicable law.

(d) Plans providing disability benefits. The claims procedures of a plan that provides disability benefits will be deemed to be reasonable only if the claims procedures comply, with respect to claims for disability benefits, with the requirements of paragraphs (b), (c)(2), (c)(3), and (c)(4) of this section.

(e) Claim for benefits. For purposes of this section, a claim for benefits is a request for a plan benefit or benefits made by a claimant in accordance with a plan's reasonable procedure for filing benefit claims. In the case of a group health plan, a claim for benefits includes any pre-service claims within the meaning of paragraph (m)(2) of this section and any post-service claims within the meaning of paragraph (m)(3) of this section.

(f) Timing of notification of benefit determination.

(1) In general. Except as provided in paragraphs (f)(2) and (f)(3) of this section, if a claim is wholly or partially denied, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 90 days after receipt of the claim by the plan, unless the plan administrator determines that special circumstances require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of

time and the date by which the plan expects to render the benefit determination.

(2) Group health plans. In the case of a group health plan, the plan administrator shall notify a claimant of the plan's benefit determination in accordance with paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, as appropriate.

(i) Urgent care claims. In the case of a claim involving urgent care, the plan administrator shall notify the claimant of the plan's benefit determination (whether adverse or not) as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claim by the plan, unless the claimant fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the plan. In the case of such a failure, the plan administrator shall notify the claimant as soon as possible, but not later than 24 hours after receipt of the claim by the plan, of the specific information necessary to complete the claim. The claimant shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours, to provide the specified information. Notification of any adverse benefit determination pursuant to this paragraph (f)(2)(i) shall be made in accordance with paragraph (g) of this section. The plan administrator shall notify the claimant of the plan's benefit determination as soon as possible, but in no case later than 48 hours after the earlier of--

(A) The plan's receipt of the specified information, or

(B) The end of the period afforded the claimant to provide the specified additional information.

(ii) Concurrent care decisions. If a group health plan has approved an ongoing course of treatment to be provided over a period of time or number of treatments--

(A) Any reduction or termination by the plan of such course of treatment (other than by plan amendment or termination) before the end of such period of time or number of treatments shall constitute an adverse benefit determination. The plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the adverse benefit determination at a time sufficiently in advance of the reduction or termination to allow the claimant to appeal and obtain a determination on review of that adverse benefit determination before the benefit is reduced or terminated.

(B) Any request by a claimant to extend the course of treatment beyond the period of time or number of treatments that is a claim involving urgent care shall be decided as soon as possible, taking into account the medical exigencies, and the plan administrator shall notify the claimant of the benefit determination, whether adverse or not, within 24 hours after receipt of the claim by the plan, provided that any such claim is made to the

plan at least 24 hours prior to the expiration of the prescribed period of time or number of treatments. Notification of any adverse benefit determination concerning a request to extend the course of treatment, whether involving urgent care or not, shall be made in accordance with paragraph (g) of this section, and appeal shall be governed by paragraph (i)(2)(i), (i)(2)(ii), or (i)(2)(iii), as appropriate.

(iii) Other claims. In the case of a claim not described in paragraphs (f)(2)(i) or (f)(2)(ii) of this section, the plan administrator shall notify the claimant of the plan's benefit determination in accordance with either paragraph (f)(2)(iii)(A) or (f)(2)(iii)(B) of this section, as appropriate.

(A) Pre-service claims. In the case of a pre-service claim, the plan administrator shall notify the claimant of the plan's benefit determination (whether adverse or not) within a reasonable period of time appropriate to the medical circumstances, but not later than 15 days after receipt of the claim by the plan. This period may be extended one time by the plan for up to 15 days, provided that the plan administrator both determines that such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 15-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If such an extension is necessary due to a failure of the claimant to submit the information

necessary to decide the claim, the notice of extension shall specifically describe the required information, and the claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information. Notification of any adverse benefit determination pursuant to this paragraph (f)(2)(iii)(A) shall be made in accordance with paragraph (g) of this section.

(B) Post-service claims. In the case of a post-service claim, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 30 days after receipt of the claim. This period may be extended one time by the plan for up to 15 days, provided that the plan administrator both determines that such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 30-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If such an extension is necessary due to a failure of the claimant to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information, and the claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information.

(3) Disability claims. In the case of a claim for disability benefits, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the plan. This period may be extended by the plan for up to 30 days, provided that the plan administrator both determines that such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If, prior to the end of the first 30-day extension period, the administrator determines that, due to matters beyond the control of the plan, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the plan administrator notifies the claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision. In the case of any extension under this paragraph (f)(3), the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

(4) Calculating time periods. For purposes of paragraph (f) of this section, the period of time within which a

benefit determination is required to be made shall begin at the time a claim is filed in accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination accompanies the filing. In the event that a period of time is extended as permitted pursuant to paragraph (f)(2)(iii) or (f)(3) of this section due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

(g) Manner and content of notification of benefit determination.

(1) Except as provided in paragraph (g)(2) of this section, the plan administrator shall provide a claimant with written or electronic notification of any adverse benefit determination. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv). The notification shall set forth, in a manner calculated to be understood by the claimant --

(i) The specific reason or reasons for the adverse determination;

(ii) Reference to the specific plan provisions on which the determination is based;

(iii)A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;

(iv) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review;

(v) In the case of an adverse benefit determination by a group health plan or a plan providing disability benefits,

(A) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request; or

(B) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

(vi) In the case of an adverse benefit determination by a group health plan concerning a claim involving urgent care, a description of the expedited review process applicable to such claims.

(2) In the case of an adverse benefit determination by a group health plan concerning a claim involving urgent care, the information described in paragraph (g)(1) of this section may be provided to the claimant orally within the time frame prescribed in paragraph (f)(2)(i) of this section, provided that a written or electronic notification in accordance with paragraph (g)(1) of this section is furnished to the claimant not later than 3 days after the oral notification.

(h) Appeal of adverse benefit determinations.

(1) In general. Every employee benefit plan shall establish and maintain a procedure by which a claimant shall have a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary of the plan, and under which there will be a full and fair review of the claim and the adverse benefit determination.

(2) Full and fair review. Except as provided in paragraphs (h)(3) and (h)(4) of this section, the claims procedures of a plan will not be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures--

(i) Provide claimants at least 60 days following receipt of a notification of an adverse benefit determination within which to appeal the determination;

(ii) Provide claimants the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits;

(iii)Provide that a claimant shall be provided, upon request and free of charge, reasonable access to,

and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(iv) Provide for a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(3) Group health plans. The claims procedures of a group health plan will not be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless, in addition to complying with the requirements of paragraphs (h)(2)(ii) through (iv) of this section, the claims procedures--

(i) Provide claimants at least 180 days following receipt of a notification of an adverse benefit determination within which to appeal the determination;

(ii) Provide for a review that does not afford deference to the initial adverse benefit determination and that is conducted by an appropriate named fiduciary of the plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual;

(iii) Provide that, in deciding an appeal of any adverse benefit determination that is based in whole or in

part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, the appropriate named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment;

(iv) Provide for the identification of medical or vocational experts whose advice was obtained on behalf of the plan in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination;

(v) Provide that the health care professional engaged for purposes of a consultation under paragraph (h)(3)(iii) of this section shall be an individual who is neither an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of any such individual; and

(vi) Provide, in the case of a claim involving urgent care, for an expedited review process pursuant to which--

(A) A request for an expedited appeal of an adverse benefit determination may be submitted orally or in writing by the claimant; and

(B) All necessary information, including the plan's benefit determination on review, shall be transmitted between the plan and the claimant

by telephone, facsimile, or other available similarly expeditious method.

(4) Plans providing disability benefits. The claims procedures of a plan providing disability benefits will not, with respect to claims for such benefits, be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures comply with the requirements of paragraphs (h)(2)(ii) through (iv) and (h)(3)(i) through (v) of this section.

(i) Timing of notification of benefit determination on review.

(1) In general.

(i) Except as provided in paragraphs (i)(1)(ii), (i)(2), and (i)(3) of this section, the plan administrator shall notify a claimant in accordance with paragraph (j) of this section of the plan's benefit determination on review within a reasonable period of time, but not later than 60 days after receipt of the claimant's request for review by the plan, unless the plan administrator determines that special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 60-day period. In no event shall such extension exceed a period of 60 days from the end of the initial period. The

extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the determination on review.

(ii) In the case of a plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(1)(i) of this section shall not apply, and, except as provided in paragraphs (i)(2) and (i)(3) of this section, the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan

administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(2) Group health plans. In the case of a group health plan, the plan administrator shall notify a claimant of the plan's benefit determination on review in accordance with paragraphs (i)(2)(i) through (iii), as appropriate.

(i) Urgent care claims. In the case of a claim involving urgent care, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination by the plan.

(ii) Pre-service claims. In the case of a pre-service claim, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review within a reasonable period of time appropriate to the medical circumstances. In the case of a group health plan that provides for one appeal of an adverse benefit determination, such notification shall be provided not later than 30 days after receipt by the plan of the claimant's request for review of an adverse benefit determination. In the case of a group health plan that provides for two appeals of an adverse determination, such notification shall be provided, with respect to any one of such two appeals, not

later than 15 days after receipt by the plan of the claimant's request for review of the adverse determination.

(iii) Post-service claims.

(A) In the case of a post-service claim, except as provided in paragraph (i)(2)(iii)(B) of this section, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review within a reasonable period of time. In the case of a group health plan that provides for one appeal of an adverse benefit determination, such notification shall be provided not later than 60 days after receipt by the plan of the claimant's request for review of an adverse benefit determination. In the case of a group health plan that provides for two appeals of an adverse determination, such notification shall be provided, with respect to any one of such two appeals, not later than 30 days after receipt by the plan of the claimant's request for review of the adverse determination.

(B) In the case of a multiemployer plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(2)(iii)(A) of this section shall not apply, and the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a

request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall notify the claimant in writing of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(3) Disability claims.

(i) Except as provided in paragraph (i)(3)(ii) of this section, claims involving disability benefits (whether the plan provides for one or two appeals) shall be governed by paragraph (i)(1) of this section, except that a period of 45 days shall apply instead of 60 days for purposes of that paragraph.

(ii) In the case of a multiemployer plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(3)(i) of this section shall not apply, and the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall notify the claimant in writing of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(4) Calculating time periods. For purposes of paragraph (i) of this section, the period of time within which a benefit determination on review is required to be made shall begin at the time an appeal is filed in accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination on review accompanies the filing. In the event that a period of time is extended as permitted pursuant to paragraph (i)(1), (i)(2)(iii)(B), or (i)(3) of this section due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

(5) Furnishing documents. In the case of an adverse benefit determination on review, the plan administrator shall provide such access to, and copies of, documents, records, and other information described in paragraphs (j)(3), (j)(4), and (j)(5) of this section as is appropriate.

(j) Manner and content of notification of benefit determination on review. The plan administrator shall provide a claimant with written or electronic notification of a plan's benefit determination on review. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv). In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant--

(1) The specific reason or reasons for the adverse determination;

(2) Reference to the specific plan provisions on which the benefit determination is based;

(3) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(4) A statement describing any voluntary appeal procedures offered by the plan and the claimant's right to obtain the information about such procedures described in paragraph (c)(3)(iv) of this section, and a statement of the claimant's right to bring an action under section 502(a) of the Act; and

(5) In the case of a group health plan or a plan providing disability benefits--

(i) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided free of charge to the claimant upon request;

(ii) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the

determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request; and

(iii) The following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."

(k) Preemption of State law.

(1) Nothing in this section shall be construed to supersede any provision of State law that regulates insurance, except to the extent that such law prevents the application of a requirement of this section.

(2) (i) For purposes of paragraph (k)(1) of this section, a State law regulating insurance shall not be considered to prevent the application of a requirement of this section merely because such State law establishes a review procedure to evaluate and resolve disputes involving adverse benefit determinations under group health plans so long as the review procedure is conducted by a person or entity other than the insurer, the plan, plan fiduciaries, the employer, or any employee or agent of any of the foregoing.

(ii) The State law procedures described in paragraph (k)(2)(i) of this section are not part of the full and fair review required by section **503** of the Act. Claimants therefore need not exhaust such State law procedures prior to bringing suit under section 502(a) of the Act.

(l) Failure to establish and follow reasonable claims procedures. In the case of the failure of a plan to establish or follow claims procedures consistent with the requirements of this section, a claimant shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.

(m) Definitions. The following terms shall have the meaning ascribed to such terms in this paragraph (m) whenever such term is used in this section:

(1) (i) A "claim involving urgent care" is any claim for medical care or treatment with respect to which the application of the time periods for making non-urgent care determinations--

(A) Could seriously jeopardize the life or health of the claimant or the ability of the claimant to regain maximum function, or,

(B) In the opinion of a physician with knowledge of the claimant's medical condition, would subject the claimant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim.

(ii) Except as provided in paragraph (m)(1)(iii) of this section, whether a claim is a "claim involving urgent care" within the meaning of paragraph (m)(1)(i)(A) of this section is to be determined by an individual acting on behalf of the plan applying the judgment of a prudent layperson who

possesses an average knowledge of health and medicine.

(iii)Any claim that a physician with knowledge of the claimant's medical condition determines is a "claim involving urgent care" within the meaning of paragraph (m)(1)(i) of this section shall be treated as a "claim involving urgent care" for purposes of this section.

(2) The term "pre-service claim" means any claim for a benefit under a group health plan with respect to which the terms of the plan condition receipt of the benefit, in whole or in part, on approval of the benefit in advance of obtaining medical care.

(3) The term ``post-service claim'' means any claim for a benefit under a group health plan that is not a pre-service claim within the meaning of paragraph (m)(2) of this section.

(4) The term ``adverse benefit determination'' means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental

or investigational or not medically necessary or appropriate.

(5) The term "notice" or ``notification" means the delivery or furnishing of information to an individual in a manner that satisfies the standards of 29 CFR 2520.104b-1(b) as appropriate with respect to material required to be furnished or made available to an individual.

(6) The term ``group health plan" means an employee welfare benefit plan within the meaning of section 3(1) of the Act to the extent that such plan provides ``medical care" within the meaning of section 733(a) of the Act.

(7) The term ``health care professional" means a physician or other health care professional licensed, accredited, or certified to perform specified health services consistent with State law.

(8) A document, record, or other information shall be considered "relevant" to a claimant's claim if such document, record, or other information

(i) Was relied upon in making the benefit determination;

(ii) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination;

(iii)Demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (b)(5) of this section in making the benefit determination; or

(iv) In the case of a group health plan or a plan providing disability benefits, constitutes a statement of policy or guidance with respect to the plan concerning the denied treatment option or benefit for the claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination.

(n) Apprenticeship plans. This section does not apply to employee benefit plans that solely provide apprenticeship training benefits.

(o) Applicability dates.

(1) Except as provided in paragraph (o)(2) of this section, this section shall apply to claims filed under a plan on or after January 1, 2002.

(2) This section shall apply to claims filed under a group health plan on or after the first day of the first plan year beginning on or after July 1, 2002, but in no event later than January 1, 2003.

UNITED STATE CODE
(Office of the Law Revision Counsel)

28 USC §1291

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE

PART IV – JURISDICTION AND VENUE

CHAPTER 83 – COURTS OF APPEALS

-HEAD-

Sec. 1291. Final Decisions of District Courts

-STATUTE-

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 55, Sec. 48, 65 Stat. 726; Pub. L. 85-508, Sec. 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 97-164, title I, Sec. 124, Apr. 2, 1982, 96 Stat. 36.)

HISTORICAL AND REVISION NOTES

... The district courts for the districts of Hawaii and Puerto Rico are embraced in the term "district courts of the United States." ...

28 USC §1292

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE

PART IV – JURISDICTION AND VENUE

CHAPTER 83 – COURTS OF APPEALS

-HEAD-

Sec. 1292. Interlocutory Decisions

-STATUTE-

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling

question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

...

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, Sec. 49, 65 Stat. 726; Pub. L. 85-508, Sec. 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 85-919, Sept. 2, 1958, 72 Stat. 1770; Pub. L. 97-164, Sec. 125, Apr. 2, 1982, 96 Stat. 36; Pub. L. 98-620, title IV, Sec. 412, Nov. 8, 1984, 98 Stat. 3362; Pub. L. 100-702, title V, Sec. 501, Nov. 19, 1988, 102 Stat. 4652; Pub. L. 102-572, title I, Sec. 101, title IX, Secs. 902(b), 906(c), Oct. 29, 1992, 106 Stat. 4506, 4516, 4518.)

HISTORICAL AND REVISION NOTES

... The district courts for the districts of Hawaii and Puerto Rico are embraced in the term "district courts of the United States."...

28 USC 1331

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE

PART IV – JURISDICTION AND VENUE

CHAPTER 85 – DISTRICT COURTS; JURISDICTION

-HEAD-

Sec. 1331. Federal Question

-STATUTE-

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 930; Pub. L. 85-554, Sec. 1, July 25, 1958, 72 Stat. 415; Pub. L. 94-574, Sec. 2, Oct. 21, 1976, 90 Stat. 2721; Pub. L. 96-486, Sec. 2(a), Dec. 1, 1980, 94 Stat. 2369.)

-MISC1-

HISTORICAL AND REVISION NOTES

...Jurisdiction of federal questions arising under other sections of this chapter is not dependent upon the amount in controversy...

28 USC §1367

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE

PART IV – JURISDICTION AND VENUE

CHAPTER 85 – DISTRICT COURTS; JURISDICTION

-HEAD-

Sec. 1367. Supplemental Jurisdiction

-STATUTE-

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if–

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

-SOURCE-

(Added Pub. L. 101-650, title III, Sec. 310(a), Dec. 1, 1990, 104 Stat. 5113.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title

28 USC §1343

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE

PART IV – JURISDICTION AND VENUE

CHAPTER 85 – DISTRICT COURTS; JURISDICTION

-HEAD-

Sec. 1343. Civil Rights and Elective Franchise

-STATUTE-

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section –

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 932; Sept. 3, 1954, ch. 1263, Sec. 42, 68 Stat. 1241; Pub. L. 85-315, part III, Sec. 121, Sept. 9, 1957, 71 Stat. 637; Pub. L. 96-170, Sec. 2, Dec. 29, 1979, 93 Stat. 1284.)

EFFECTIVE DATE OF 1979 AMENDMENT

Section 3 of Pub. L. 96-170 provided that: "The amendments made by this Act [amending this section and section 1983 of Title 42, The Public Health and Welfare] shall apply with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after the date of the enactment of this Act [Dec. 29, 1979]."

28 USC §2072

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE

PART V – PROCEDURE

CHAPTER 131 – RULES OF COURTS

-HEAD-

Sec. 2072. Rules of Procedure and Evidence; Power to Prescribe

-STATUTE-

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

-SOURCE-

(Added Pub. L. 100-702, title IV, Sec. 401(a), Nov. 19, 1988, 102 Stat. 4648; amended Pub. L. 101-650, title III, Secs. 315, 321, Dec. 1, 1990, 104 Stat. 5115, 5117.).

28 USCA Rule 4

TITLE 28 – APPENDIX

FEDERAL RULES OF APPELLATE PROCEDURE

TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

-HEAD-

Rule 4. Appeal as of Right - When Taken

-STATUTE-

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

(B) (i) If a party files a notice of appeal after the court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A) – the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal – in compliance with Rule 3(c) - within the time prescribed by this Rule measured from the

entry of the order disposing of the last such remaining motion. –

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after

the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a)(1) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a)(1) does not affect the validity of an appeal from that judgment or order.

-SOURCE-

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Nov. 18, 1988, Pub. L. 100-690, title VII, Sec. 7111, 102 Stat. 4419; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

COMMITTEE NOTES ON RULES - 2002 AMENDMENT

Subdivision (a)(1)(C). The federal courts of appeals have reached conflicting conclusions about whether an appeal from an order granting or denying an application for a writ of error coram nobis is governed by the time limitations of Rule 4(a) (which apply in civil cases) or by the time limitations of Rule 4(b) (which apply in criminal cases).Compare United States v. Craig, 907 F.2d 653, 655-57, amended 919 F.2d 57 (7th Cir. 1990); United States v. Cooper, 876 F.2d 1192, 1193-94 (5th Cir. 1989); and United States v. Keogh, 391 F.2d 138, 140 (2d Cir. 1968) (applying the time limitations of Rule 4(a)); with Yasui v. United States, 772 F.2d 1496, 1498-99 (9th Cir. 1985); and United States v. Mills, 430 F.2d 526, 527-28 (8th Cir. 1970) (applying the time limitations of Rule 4(b)). A new part (C) has been added to Rule 4(a)(1) to resolve this conflict by providing that the time limitations of Rule 4(a) will apply.

Subsequent to the enactment of Fed. R. Civ. P. 60(b) and 28 U.S.C. Sec. 2255, the Supreme Court has recognized the continued availability of a writ of error coram nobis in at least one narrow circumstance. In 1954, the Court permitted a litigant who had been convicted of a crime, served his full sentence, and been released from prison, but who was continuing to suffer a legal disability on account of the conviction, to seek a writ of error coram nobis to set aside the conviction. United States v. Morgan, 346 U.S. 502 (1954).

As the Court recognized, in the Morgan situation an application for a writ of error coram nobis "is of the same general character as [a motion] under 28 U.S.C. Sec. 2255." Id. at 506 n.4. Thus, it seems appropriate that the time limitations of Rule 4(a), which apply when a district court grants or denies relief under 28 U.S.C. Sec. 2255, should also apply when a district court grants or denies a writ of error coram nobis. In addition, the strong public interest in the speedy resolution of criminal appeals that is reflected in the shortened deadlines of Rule 4(b) is not present in the Morgan situation, as the party seeking the writ of error coram nobis has already served his or her full sentence.

Notwithstanding Morgan, it is not clear whether the Supreme Court continues to believe that the writ of error coram nobis is available in federal court. In civil cases, the writ has been expressly abolished by Fed. R. Civ. P. 60(b). In criminal cases, the Supreme Court has recently stated that it has become "'difficult to conceive of a situation'" in which the writ "'would be necessary or appropriate.'" Carlisle v. United States, 517 U.S. 416, 429 (1996) (quoting United States v. Smith, 331 U.S. 469, 475 n.4 (1947)). The amendment to Rule 4(a)(1) is not intended to express any view on this issue; rather, it is merely meant to specify time limitations for appeals.

Rule 4(a)(1)(C) applies only to motions that are in substance, and not merely in form, applications for writs of error coram nobis. Litigants may bring and label as applications for a writ of error coram nobis what are in reality motions for a new trial under Fed. R. Crim. P. 33 or motions for correction or reduction of a sentence under Fed. R. Crim. P. 35. In such cases, the time limitations of Rule 4(b), and not those of Rule 4(a), should be enforced.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note.

Subdivision (a)(4)(A)(vi). Rule 4(a)(4)(A)(vi) has been amended to remove a parenthetical that directed that the 10-day deadline be "computed using Federal Rule of Civil Procedure 6(a)." That parenthetical has become superfluous because Rule 26(a)(2) has been amended to require that all deadlines under 11 days be calculated as they are under Fed. R. Civ. P. 6(a).

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note.

Subdivision (a)(5)(A)(ii). Rule 4(a)(5)(A) permits the district court to extend the time to file a notice of appeal if two conditions are met. First, the party seeking the extension must file its motion no later than 30 days after the expiration of the time originally prescribed by Rule 4(a). Second, the party seeking the extension must show either excusable neglect or good cause. The text of Rule 4(a)(5)(A) does not distinguish between motions filed prior to the expiration of the original deadline and those filed after the expiration of the original deadline. Regardless of whether the motion is filed before or during the 30 days after the original deadline expires, the district court may grant an extension if a party shows either excusable neglect or good cause.

Despite the text of Rule 4(a)(5)(A), most of the courts of appeals have held that the good cause standard applies only to motions brought prior to the expiration of the original deadline and that the excusable neglect standard applies only to motions brought during the 30 days following the expiration of the original deadline. See Pontarelli v. Stone,

930 F.2d 104, 109-10 (1st Cir. 1991) (collecting cases from the Second, Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits). These courts have relied heavily upon the Advisory Committee Note to the 1979 amendment to Rule 4(a)(5). But the Advisory Committee Note refers to a draft of the 1979 amendment that was ultimately rejected. The rejected draft directed that the good cause standard apply only to motions filed prior to the expiration of the original deadline. Rule 4(a)(5), as actually amended, did not. See 16A Charles Alan Wright, et al., Federal Practice and Procedure Sec. 3950.3, at 148-49 (2d ed. 1996).

The failure of the courts of appeals to apply Rule 4(a)(5)(A) as written has also created tension between that rule and Rule 4(b)(4). As amended in 1998, Rule 4(b)(4) permits the district court to extend the time for filing a notice of appeal in a criminal case for an additional 30 days upon a finding of excusable neglect or good cause. Both Rule 4(b)(4) and the Advisory Committee Note to the 1998 amendment make it clear that an extension can be granted for either excusable neglect or good cause, regardless of whether a motion for an extension is filed before or during the 30 days following the expiration of the original deadline.

Rule 4(a)(5)(A)(ii) has been amended to correct this misunderstanding and to bring the rule in harmony in this respect with Rule 4(b)(4). A motion for an extension filed prior to the expiration of the original deadline may be granted if the movant shows either excusable neglect or good cause. Likewise, a motion for an extension filed during the 30 days following the expiration of the original deadline may be granted if the movant shows either excusable neglect or good cause.

The good cause and excusable neglect standards have "different domains." Lorenzen v. Employees Retirement

Plan, 896 F.2d 228, 232 (7th Cir. 1990). They are not interchangeable, and one is not inclusive of the other. The excusable neglect standard applies in situations in which there is fault; in such situations, the need for an extension is usually occasioned by something within the control of the movant. The good cause standard applies in situations in which there is no fault - excusable or otherwise. In such situations, the need for an extension is usually occasioned by something that is not within the control of the movant.

Thus, the good cause standard can apply to motions brought during the 30 days following the expiration of the original deadline. If, for example, the Postal Service fails to deliver a notice of appeal, a movant might have good cause to seek a post-expiration extension. It may be unfair to make such a movant prove that its "neglect" was excusable, given that the movant may not have been neglectful at all. Similarly, the excusable neglect standard can apply to motions brought prior to the expiration of the original deadline. For example, a movant may bring a pre-expiration motion for an extension of time when an error committed by the movant makes it unlikely that the movant will be able to meet the original deadline.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment. The stylistic changes to the Committee Note suggested by Judge Newman were adopted. In addition, two paragraphs were added at the end of the Committee Note to clarify the difference between the good cause and excusable neglect standards.

Subdivision (a)(7). Several circuit splits have arisen out of uncertainties about how Rule 4(a)(7)'s definition of when a judgment or order is "entered" interacts with the requirement in Fed. R. Civ. P. 58 that, to be "effective," a

judgment must be set forth on a separate document. Rule 4(a)(7) and Fed. R. Civ. P. 58 have been amended to resolve those splits.

1. The first circuit split addressed by the amendments to Rule 4(a)(7) and Fed. R. Civ. P. 58 concerns the extent to which orders that dispose of post-judgment motions must be set forth on separate documents. Under Rule 4(a)(4)(A), the filing of certain post-judgment motions tolls the time to appeal the underlying judgment until the "entry" of the order disposing of the last such remaining motion. Courts have disagreed about whether such an order must be set forth on a separate document before it is treated as "entered." This disagreement reflects a broader dispute among courts about whether Rule 4(a)(7) independently imposes a separate document requirement (a requirement that is distinct from the separate document requirement that is imposed by the Federal Rules of Civil Procedure ("FRCP")) or whether Rule 4(a)(7) instead incorporates the separate document requirement as it exists in the FRCP. Further complicating the matter, courts in the former "camp" disagree among themselves about the scope of the separate document requirement that they interpret Rule 4(a)(7) as imposing, and courts in the latter "camp" disagree among themselves about the scope of the separate document requirement imposed by the FRCP.

Rule 4(a)(7) has been amended to make clear that it simply incorporates the separate document requirement as it exists in Fed. R. Civ. P. 58. If Fed. R. Civ. P. 58 does not require that a judgment or order be set forth on a separate document, then neither does Rule 4(a)(7); the judgment or order will be deemed entered for purposes of Rule 4(a) when it is entered in the civil docket. If Fed. R. Civ. P. 58 requires that a judgment or order be set forth on a separate document,

then so does Rule 4(a)(7); the judgment or order will not be deemed entered for purposes of Rule 4(a) until it is so set forth and entered in the civil docket (with one important exception, described below).

In conjunction with the amendment to Rule 4(a)(7), Fed. R. Civ. P. 58 has been amended to provide that orders disposing of the post-judgment motions listed in new Fed. R. Civ. P. 58(a)(1) (which post-judgment motions include, but are not limited to, the post-judgment motions that can toll the time to appeal under Rule 4(a)(4)(A)) do not have to be set forth on separate documents. See Fed. R. Civ. P. 58(a)(1). Thus, such orders are entered for purposes of Rule 4(a) when they are entered in the civil docket pursuant to Fed. R. Civ. P. 79(a). See Rule 4(a)(7)(A)(1).

2. The second circuit split addressed by the amendments to Rule 4(a)(7) and Fed. R. Civ. P. 58 concerns the following question: When a judgment or order is required to be set forth on a separate document under Fed. R. Civ. P. 58 but is not, does the time to appeal the judgment or order - or the time to bring post-judgment motions, such as a motion for a new trial under Fed. R. Civ. P. 59 - ever begin to run? According to every circuit except the First Circuit, the answer is "no." The First Circuit alone holds that parties will be deemed to have waived their right to have a judgment or order entered on a separate document three months after the judgment or order is entered in the civil docket. See Fiore v. Washington County Community Mental Health Ctr., 960 F.2d 229, 236 (1st Cir. 1992) (en banc). Other circuits have rejected this cap as contrary to the relevant rules. See, e.g., United States v. Haynes, 158 F.3d 1327, 1331 (D.C. Cir. 1998); Hammack v. Baroid Corp., 142 F.3d 266, 269-70 (5th Cir. 1998); Rubin v. Schottenstein, Zox & Dunn, 110 F.3d 1247, 1253 n.4 (6th Cir. 1997), vacated on other grounds, 143 F.3d 263 (6th Cir.

1998) (en banc). However, no court has questioned the wisdom of imposing such a cap as a matter of policy.

Both Rule 4(a)(7)(A) and Fed. R. Civ. P. 58 have been amended to impose such a cap. Under the amendments, a judgment or order is generally treated as entered when it is entered in the civil docket pursuant to Fed. R. Civ. P. 79(a). There is one exception: When Fed. R. Civ. P. 58(a)(1) requires the judgment or order to be set forth on a separate document, that judgment or order is not treated as entered until it is set forth on a separate document (in addition to being entered in the civil docket) or until the expiration of 150 days after its entry in the civil docket, whichever occurs first. This cap will ensure that parties will not be given forever to appeal (or to bring a post-judgment motion) when a court fails to set forth a judgment or order on a separate document in violation of Fed. R. Civ. P. 58(a)(1).

3. The third circuit split - this split addressed only by the amendment to Rule 4(a)(7) - concerns whether the appellant may waive the separate document requirement over the objection of the appellee. In Bankers Trust Co. v. Mallis, 435 U.S. 381, 387 (1978) (per curiam), the Supreme Court held that the "parties to an appeal may waive the separate-judgment requirement of Rule 58." Specifically, the Supreme Court held that when a district court enters an order and "clearly evidence[s] its intent that the . . . order . . . represent[s] the final decision in the case," the order is a "final decision" for purposes of 28 U.S.C. Sec. 1291, even if the order has not been set forth on a separate document for purposes of Fed. R. Civ. P. 58. Id. Thus, the parties can choose to appeal without waiting for the order to be set forth on a separate document.

Courts have disagreed about whether the consent of all parties is necessary to waive the separate document

requirement. Some circuits permit appellees to object to attempted Mallis waivers and to force appellants to return to the trial court, request that judgment be set forth on a separate document, and appeal a second time. See, e.g., Selletti v. Carey, 173 F.3d 104, 109-10 (2d Cir. 1999); Williams v. Borg, 139 F.3d 737, 739-40 (9th Cir. 1998); Silver Star Enters., Inc. v. M/V Saramacca, 19 F.3d 1008, 1013 (5th Cir. 1994). Other courts disagree and permit Mallis waivers even if the appellee objects. See, e.g., Haynes, 158 F.3d at 1331; Miller v. Artistic Cleaners, 153 F.3d 781, 783-84 (7th Cir. 1998); Alvord-Polk, Inc. v. F. Schumacher & Co., 37 F.3d 996, 1006 n.8 (3d Cir. 1994).

New Rule 4(a)(7)(B) is intended both to codify the Supreme Court's holding in Mallis and to make clear that the decision whether to waive the requirement that the judgment or order be set forth on a separate document is the appellant's alone. It is, after all, the appellant who needs a clear signal as to when the time to file a notice of appeal has begun to run. If the appellant chooses to bring an appeal without waiting for the judgment or order to be set forth on a separate document, then there is no reason why the appellee should be able to object. All that would result from honoring the appellee's objection would be delay.

4. The final circuit split addressed by the amendment to Rule 4(a)(7) concerns the question whether an appellant who chooses to waive the separate document requirement must appeal within 30 days (60 days if the government is a party) from the entry in the civil docket of the judgment or order that should have been set forth on a separate document but was not. In Townsend v. Lucas, 745 F.2d 933 (5th Cir. 1984), the district court dismissed a 28 U.S.C. Sec. 2254 action on May 6, 1983, but failed to set forth the judgment on a separate document. The plaintiff appealed on January 10,

1984. The Fifth Circuit dismissed the appeal, reasoning that, if the plaintiff waived the separate document requirement, then his appeal would be from the May 6 order, and if his appeal was from the May 6 order, then it was untimely under Rule 4(a)(1). The Fifth Circuit stressed that the plaintiff could return to the district court, move that the judgment be set forth on a separate document, and appeal from that judgment within 30 days. Id. at 934. Several other cases have embraced the Townsend approach. See, e.g., Armstrong v. Ahitow, 36 F.3d 574, 575 (7th Cir. 1994) (per curiam); Hughes v. Halifax County Sch. Bd., 823 F.2d 832, 835-36 (4th Cir. 1987); Harris v. McCarthy, 790 F.2d 753, 756 n.1 (9th Cir. 1986).

Those cases are in the distinct minority. There are numerous cases in which courts have heard appeals that were not filed within 30 days (60 days if the government was a party) from the judgment or order that should have been set forth on a separate document but was not. See, e.g., Haynes, 158 F.3d at 1330-31; Clough v. Rush, 959 F.2d 182, 186 (10th Cir. 1992); McCalden v. California Library Ass'n, 955 F.2d 1214, 1218-19 (9th Cir. 1990). In the view of these courts, the remand in Townsend was "precisely the purposeless spinning of wheels abjured by the Court in the [Mallis] case." 15B Charles Alan Wright et al., Federal Practice and Procedure Sec. 3915, at 259 n.8 (3d ed. 1992).

The Committee agrees with the majority of courts that have rejected the Townsend approach. In drafting new Rule 4(a)(7)(B), the Committee has been careful to avoid phrases such as "otherwise timely appeal" that might imply an endorsement of Townsend.

Changes Made After Publication and Comments. No changes were made to the text of proposed Rule 4(a)(7)(B) or to the third or fourth numbered sections of the Committee

Note, except that, in several places, references to a judgment being "entered" on a separate document were changed to references to a judgment being "set forth" on a separate document. This was to maintain stylistic consistency. The appellate rules and the civil rules consistently refer to "entering" judgments on the civil docket and to "setting forth" judgments on separate documents.

Two major changes were made to the text of proposed Rule 4(a)(7)(A) – one substantive and one stylistic. The substantive change was to increase the "cap" from 60 days to 150 days. The Appellate Rules Committee and the Civil Rules Committee had to balance two concerns that are implicated whenever a court fails to enter its final decision on a separate document. On the one hand, potential appellants need a clear signal that the time to appeal has begun to run, so that they do not unknowingly forfeit their rights. On the other hand, the time to appeal cannot be allowed to run forever. A party who receives no notice whatsoever of a judgment has only 180 days to move to reopen the time to appeal from that judgment. See Rule 4(a)(6)(A). It hardly seems fair to give a party who does receive notice of a judgment an unlimited amount of time to appeal, merely because that judgment was not set forth on a separate piece of paper. Potential appellees and the judicial system need some limit on the time within which appeals can be brought.

The 150-day cap properly balances these two concerns. When an order is not set forth on a separate document, what signals litigants that the order is final and appealable is a lack of further activity from the court. A 60-day period of inactivity is not sufficiently rare to signal to litigants that the court has entered its last order. By contrast, 150 days of inactivity is much less common and thus more clearly signals to litigants that the court is done with their case.

The major stylistic change to Rule 4(a)(7) requires some explanation. In the published draft, proposed Rule 4(a)(7)(A) provided that "[a] judgment or order is entered for purposes of this Rule 4(a) when it is entered for purposes of Rule 58(b) of the Federal Rules of Civil Procedure." In other words, Rule 4(a)(7)(A) told readers to look to FRCP 58(b) to ascertain when a judgment is entered for purposes of starting the running of time to appeal. Sending appellate lawyers to the civil rules to discover when time began to run for purposes of the appellate rules was itself somewhat awkward, but it was made more confusing by the fact that, when readers went to proposed FRCP 58(b), they found this introductory clause: "Judgment is entered for purposes of Rules 50, 52, 54(d)(2)(B), 59, 60, and 62 when . . ."

This introductory clause was confusing for both appellate lawyers and trial lawyers. It was confusing for appellate lawyers because Rule 4(a)(7) informed them that FRCP 58(b) would tell them when the time begins to run for purposes of the appellate rules, but when they got to FRCP 58(b) they found a rule that, by its terms, dictated only when the time begins to run for purposes of certain civil rules. The introductory clause was confusing for trial lawyers because FRCP 58(b) described when judgment is entered for some purposes under the civil rules, but then was completely silent about when judgment is entered for other purposes.

To avoid this confusion, the Civil Rules Committee, on the recommendation of the Appellate Rules Committee, changed the introductory clause in FRCP 58(b) to read simply: "Judgment is entered for purposes of these Rules when . . . ." In addition, Rule 4(a)(7)(A) was redrafted [A redraft of Rule 4(a)(7) was faxed to members of the Appellate Rules Committee two weeks after our meeting in New Orleans. The Committee consented to the redraft

without objection.] so that the triggering events for the running of the time to appeal (entry in the civil docket, and being set forth on a separate document or passage of 150 days) were incorporated directly into Rule 4(a)(7), rather than indirectly through a reference to FRCP 58(b). This eliminates the need for appellate lawyers to examine Rule 58(b) and any chance that Rule 58(b)'s introductory clause (even as modified) might confuse them

We do not believe that republication of Rule 4(a)(7) or FRCP 58 is necessary. In substance, rewritten Rule 4(a)(7)(A) and FRCP 58(b) operate identically to the published versions, except that the 60-day cap has been replaced with a 150-day cap – a change that was suggested by some of the commentators and that makes the cap more forgiving. ...

28 USCA Rule 18

TITLE 28 – APPENDIX

FEDERAL RULES OF CIVIL PROCEDURE

IV. PARTIES

-HEAD-

Rule 18. Joinder of Claims and Remedies

-STATUTE-

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances.

Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

-SOURCE-

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES – 1937

Note to Subdivision (a).

1. Recent development, both in code and common law states, has been toward unlimited joinder of actions. See Ill.Rev.Stat. (1937) ch. 110, Sec. 168; N.J.S.A. 2:27-37, as modified by N.J.Sup.Ct.Rules, Rule 21, 2 N.J.Misc. 1208

(1924); N.Y.C.P.A. (1937) Sec. 258 as amended by Laws of 1935, ch. 339.

2. This provision for joinder of actions has been patterned upon [former] Equity Rule 26 (Joinder of Causes of Action) and broadened to include multiple parties. Compare the English practice, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 18, r.r. 1-9 (noting rules 1 and 6). The earlier American codes set forth classes of joinder, following the now abandoned New York rule. See N.Y.C.P.A. Sec. 258 before amended in 1935; Compare Kan.Gen.Stat.Ann. (1935) Sec. 60-601; Wis.Stat. (1935) Sec. 263.04 for the more liberal practice.

3. The provisions of this rule for the joinder of claims are subject to Rule 82 (Jurisdiction and Venue Unaffected). For the jurisdictional aspects of joinder of claims, see Shulman and Jaegerman, Some Jurisdictional Limitations on Federal Procedure (1936), 45 Yale L.J. 393, 397-410. For separate trials of joined claims, see Rule 42(b).

Note to Subdivision (b). This rule is inserted to make it clear that in a single action a party should be accorded all the relief to which he is entitled regardless of whether it is legal or equitable or both. This necessarily includes a deficiency judgment in foreclosure actions formerly provided for in [former] Equity Rule 10 (Decree for Deficiency in Foreclosures, Etc.). In respect to fraudulent conveyances the rule changes the former rule requiring a prior judgment against the owner (Braun v. American Laundry Mach. Co., 56 F.(2d) 197 (S.D.N.Y. 1932)) to conform to the provisions of the Uniform Fraudulent Conveyance Act, Secs. 9 and 10. See McLaughlin, Application of the Uniform Fraudulent Conveyance Act, 46 Harv.L.Rev. 404, 444 (1933).

NOTES OF ADVISORY COMMITTEE ON RULES – 1966 AMENDMENT

The Rules "proceed upon the theory that no inconvenience can result from the joinder of any two or more matters in the pleadings, but only from trying two or more matters together which have little or nothing in common." Sunderland, The New Federal Rules, 45 W.Va.L.Q. 5, 13 (1938); see Clark, Code Pleading 58 (2d ed. 1947). Accordingly, Rule 18(a) has permitted a party to plead multiple claims of all types against an opposing party, subject to the court's power to direct an appropriate procedure for trying the claims. See Rules 42(b), 20(b), 21.

The liberal policy regarding joinder of claims in the pleadings extends to cases with multiple parties. However, the language used in the second sentence of Rule 18(a) – "if the requirements of Rules 19 [necessary joinder of parties], 20 [permissive joinder of parties], and 22 [interpleader] are satisfied" – has led some courts to infer that the rules regulating joinder of parties are intended to carry back to Rule 18(a) and to impose some special limits on joinder of claims in multiparty cases. In particular, Rule 20(a) has been read as restricting the operation of Rule 18(a) in certain situations in which a number of parties have been permissively joined in an action. In Federal Housing Admr. v. Christianson, 26 F.Supp. 419 (D.Conn. 1939), the indorsee of two notes sued the three comakers of one note, and sought to join in the action a count on a second note which had been made by two of the three defendants. There was no doubt about the propriety of the joinder of the three parties defendant, for a right to relief was being asserted against all three defendants which arose out of a single "transaction" (the first note) and a question of fact or law "common" to all three defendants would arise in the action. See the text of

Rule 20(a). The court, however, refused to allow the joinder of the count on the second note, on the ground that this right to relief, assumed to arise from a distinct transaction, did not involve a question common to all the defendants but only two of them. For analysis of the Christianson case and other authorities, see 2 Barron & Holtzoff, Federal Practice & Procedure, Sec. 533.1 (Wright ed. 1961); 3 Moore's Federal Practice, par. 18.04[3] (2d ed. 1963).

If the court's view is followed, it becomes necessary to enter at the pleading stage into speculations about the exact relation between the claim sought to be joined against fewer than all the defendants properly joined in the action, and the claims asserted against all the defendants. Cf. Wright, Joinder of Claims and Parties Under Modern Pleading Rules, 36 Minn.L.Rev. 580, 605-06 (1952). Thus if it could be found in the Christianson situation that the claim on the second note arose out of the same transaction as the claim on the first or out of a transaction forming part of a "series," and that any question of fact or law with respect to the second note also arose with regard to the first, it would be held that the claim on the second note could be joined in the complaint. See 2 Barron & Holtzoff, supra, at 199; see also id. at 198 n. 60.4; cf. 3 Moore's Federal Practice, supra, at 1811. Such pleading niceties provide a basis for delaying and wasteful maneuver. It is more compatible with the design of the Rules to allow the claim to be joined in the pleading, leaving the question of possible separate trial of that claim to be later decided. See 2 Barron & Holtzoff, supra, Sec. 533.1; Wright, supra, 36 Minn.L.Rev. at 604-11; Developments in the Law - Multiparty Litigation in the Federal Courts, 71 Harv. 874, 970-71 (1958); Commentary, Relation Between Joinder of Parties and Joinder of Claims, 5 F.R.Serv. 822 (1942). It is instructive to note that the court in the Christianson case,

while holding that the claim on the second note could not be joined as a matter of pleading, held open the possibility that both claims would later be consolidated for trial under Rule 42(a). See 26 F.Supp. 419.

Rule 18(a) is now amended not only to overcome the Christianson decision and similar authority, but also to state clearly as a comprehensive proposition, that a party asserting a claim (an original claim, counterclaim, cross-claim, or third-party claim) may join as many claims as he has against an opposing party. See Noland Co., Inc. v. Graver Tank & Mfg. Co., 301 F.2d 43, 49-51 (4th Cir. 1962); but cf. C. W. Humphrey Co. v. Security Alum. Co., 3 F.R.D. 41 (E.D.Mich. 1962) This permitted joinder of claims is not affected by the fact that there are multiple parties in the action. The joinder of parties is governed by other rules operating independently.

It is emphasized that amended Rule 18(a) deals only with pleading. As already indicated, a claim properly joined as a matter of pleading need not be proceeded with together with the other claim if fairness or convenience justifies separate treatment.

Amended Rule 18(a), like the rule prior to amendment, does not purport to deal with questions of jurisdiction or venue which may arise with respect to claims properly joined as a matter of pleading. See Rule 82.

See also the amendment of Rule 20(a) and the Advisory Committee's Note thereto.

Free joinder of claims and remedies is one of the basic purposes of unification of the admiralty and civil procedure. The amendment accordingly provides for the inclusion in the rule of maritime claims as well as those which are legal and equitable in character.

28 USCA Rule 54

TITLE 28 – APPENDIX

FEDERAL RULES OF CIVIL PROCEDURE

VII. JUDGMENT

-HEAD-

Rule 54. Judgments; Costs

-STATUTE-

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every

final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs; Attorneys' Fees

(1) Costs Other than Attorneys' Fees. Except when express provision therefore is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Such costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

(2) Attorneys' Fees...

-SOURCE-

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Apr. 17, 1961, eff. July 19, 1961; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES - 1946 AMENDMENT

The historic rule in the federal courts has always prohibited piecemeal disposal of litigation and permitted appeals only from final judgments except in those special instances covered by statute. Hohorst v. Hamburg-American Packet Co. (1893) 148 U.S. 262; Rexford v. Brunswick-Balke-Collender Co. (1913) 228 U.S. 339; Collins v. Miller (1920) 252 U.S. 364. Rule 54(b) was originally adopted in view of the wide scope and possible content of the newly

created "civil action" in order to avoid the possible injustice of a delay in judgment of a distinctly separate claim to await adjudication of the entire case. It was not designed to overturn the settled federal rule stated above, which, indeed, has more recently been reiterated in Catlin v. United States (1945) 324 U.S. 229. See also United States v. Florian (1941) 312 U.S. 656, rev'g (and restoring the first opinion in) Florian v. United States (C.C.A.7th, 1940) 114 F.(2d) 990; Reeves v. Beardall (1942) 316 U.S. 283.

Unfortunately, this was not always understood, and some confusion ensued. Hence situations arose where district courts made a piecemeal disposition of an action and entered what the parties thought amounted to a judgment, although a trial remained to be had on other claims similar or identical with those disposed of. In the interim the parties did not know their ultimate rights, and accordingly took an appeal, thus putting the finality of the partial judgment in question. While most appellate courts have reached a result generally in accord with the intent of the rule, yet there have been divergent precedents and division of views which have served to render the issues more clouded to the parties appellant. It hardly seems a case where multiplicity of precedents will tend to remove the problem from debate. The problem is presented and discussed in the following cases: Atwater v. North American Coal Corp. (C.C.A.2d, 1940) 111 F.(2d) 125; Rosenblum v. Dingfelder (C.C.A.2d, 1940) 111 F.(2d) 406; Audi-Vision, Inc. v. RCA Mfg. Co., Inc. (C.C.A.2d, 1943) 136 F.(2d) 621; Zalkind v. Scheinman (C.C.A.2d, 1943) 139 F.(2d) 895; Oppenheimer v. F. J. Young & Co., Inc. (C.C.A.2d, 1944) 144 F.(2d) 387; Libbey-Owens-Ford Glass Co. v. Sylvania Industrial Corp. (C.C.A.2d, 1946) 154 F.(2d) 814, cert. den. (1946) 66 S.Ct. 1353; Zarati Steamship Co. v. Park Bridge Corp. (C.C.A.2d,

1946) 154 F.(2d) 377; Baltimore and Ohio R. Co. v. United Fuel Gas Co. (C.C.A.4th, 1946) 154 F.(2d) 545; Jefferson Electric Co. v. Sola Electric Co. (C.C.A.7th, 1941) 122 F.(2d) 124; Leonard v. Socony-Vacuum Oil Co. (C.C.A.7th, 1942) 130 F.(2d) 535; Markham v. Kasper (C.C.A.7th, 1945) 152 F.(2d) 270; Hanney v. Franklin Fire Ins. Co. of Philadelphia (C.C.A.9th, 1944) 142 F.(2d) 864; Toomey v. Toomey (App.D.C. 1945) 149 F.(2d) 19.

In view of the difficulty thus disclosed, the Advisory Committee in its two preliminary drafts of proposed amendments attempted to redefine the original rule with particular stress upon the interlocutory nature of partial judgments which did not adjudicate all claims arising out of a single transaction or occurrence. This attempt appeared to meet with almost universal approval from those of the profession commenting upon it, although there were, of course, helpful suggestions for additional changes in language or clarification of detail. But cf. Circuit Judge Frank's dissenting opinion in Libbey-Owens-Ford Glass Co. v. Sylvania Industrial Corp., supra, n. 21 of the dissenting opinion. The Committee, however, became convinced on careful study of its own proposals that the seeds of ambiguity still remained, and that it had not completely solved the problem of piecemeal appeals. After extended consideration, it concluded that a retention of the older federal rule was desirable, and that this rule needed only the exercise of a discretionary power to afford a remedy in the infrequent harsh case to provide a simple, definite, workable rule. This is afforded by amended Rule 54(b). It re-establishes an ancient policy with clarity and precision. For the possibility of staying execution where not all claims are disposed of under Rule 54(b), see amended Rule 62(h).

28 USCA Rule 58

TITLE 28 – APPENDIX

FEDERAL RULES OF CIVIL PROCEDURE

VII. JUDGMENT

-HEAD-

Rule 58. Entry of Judgment

-STATUTE-

(a) Separate Document.

(1) Every judgment and amended judgment must be set forth on a separate document, but a separate document is not required for an order disposing of a motion:

(A) for judgment under Rule 50(b);

(B) to amend or make additional findings of fact under Rule 52(b);

(C) for attorney fees under Rule 54;

(D) for a new trial, or to alter or amend the judgment, under Rule 59; or

(E) for relief under Rule 60.

(2) Subject to Rule 54(b):

(A) unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

(i) the jury returns a general verdict,

(ii) the court awards only costs or a sum certain, or

(iii) the court denies all relief;

(B) the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(i) the jury returns a special verdict or a general verdict accompanied by interrogatories, or

(ii) the court grants other relief not described in Rule 58(a)(2).

(b) Time of Entry. Judgment is entered for purposes of these rules:

(1) if Rule 58(a)(1) does not require a separate document, when it is entered in the civil docket under Rule 79(a), and

(2) if Rule 58(a)(1) requires a separate document, when it is entered in the civil docket under Rule 79(a) and when the earlier of these events occurs:

(A) when it is set forth on a separate document, or

(B) when 150 days have run from entry in the civil docket under Rule 79(a).

(c) Cost or Fee Awards.

(1) Entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except as provided in Rule 58(c)(2).

(2) When a timely motion for attorney fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and has become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

(d) Request for Entry. A party may request that judgment be set forth on a separate document as required by Rule 58(a)(1).

-SOURCE-

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES - 1963 AMENDMENT

...Hitherto some difficulty has arisen, chiefly where the court has written an opinion or memorandum containing some apparently directive or dispositive words, e.g., "the plaintiff's motion [for summary judgment] is granted," see United States v. F. & M. Schaefer Brewing Co., 356 U.S. 227, 229, 78 S.Ct. 674, 2 L.Ed.2d 721 (1958). Clerks on occasion have viewed these opinions or memoranda as being in themselves a sufficient basis for entering judgment in the civil docket as provided by Rule 79(a). However, where the opinion or memorandum has not contained all the elements of a judgment, or where the judge has later signed a formal judgment, it has become a matter of doubt whether the purported entry of judgment was effective, starting the time running for postverdict motions and for the purpose of appeal. See id.; and compare Blanchard v. Commonwealth Oil Co., 294 F.2d 834 (5th Cir. 1961); United States v. Higginson, 238 F.2d 439 (1st Cir. 1956); Danzig v. Virgin Isle Hotel, Inc., 278 F.2d 580 (3d Cir. 1960); Sears v. Austin, 282 F.2d 340 (9th Cir. 1960), with Matteson v. United States, supra; Erstling v. Southern Bell Tel. & Tel. Co., 255 F.2d 93 (5th Cir. 1958); Barta v. Oglala Sioux Tribe, 259 F.2d 553 (8th Cir. 1958), cert. denied, 358 U.S. 932, 79 S.Ct. 320, 3 L.Ed.2d 304 (1959); Beacon Fed. S. & L. Assn. v. Federal Home L. Bank Bd., 266 F.2d 246 (7th Cir.), cert. denied, 361 U.S. 823, 80 S.Ct. 70, 4 L.Ed.2d 67 (1959); Ram v. Paramount Film D. Corp., 278 F.2d 191 (4th Cir. 1960).

The amended rule eliminates these uncertainties by requiring that there be a judgment set out on a separate

document - distinct from any opinion or memorandum - which provides the basis for the entry of judgment. That judgments shall be on separate documents is also indicated in Rule 79(b); and see General Rule 10 of the U.S. District Courts for the Eastern and Southern Districts of New York; Ram v. Paramount Film D. Corp., supra, at 194.

See the amendment of Rule 79(a) and the new specimen forms of judgment, Forms 31 and 32.

See also Rule 55(b)(1) and (2) covering the subject of judgments by default.

COMMITTEE NOTES ON RULES - 2002 AMENDMENT

Rule 58 has provided that a judgment is effective only when set forth on a separate document and entered as provided in Rule 79(a). This simple separate document requirement has been ignored in many cases. The result of failure to enter judgment on a separate document is that the time for making motions under Rules 50, 52, 54(d)(2)(B), 59, and some motions under Rule 60, never begins to run. The time to appeal under Appellate Rule 4(a) also does not begin to run. There have been few visible problems with respect to Rule 50, 52, 54(d)(2)(B), 59, or 60 motions, but there have been many and horridly confused problems under Appellate Rule 4(a). These amendments are designed to work in conjunction with Appellate Rule 4(a) to ensure that appeal time does not linger on indefinitely, and to maintain the integration of the time periods set for Rules 50, 52, 54(d)(2)(B), 59, and 60 with Appellate Rule 4(a).

Rule 58(a) preserves the core of the present separate document requirement, both for the initial judgment and for any amended judgment. No attempt is made to sort through the confusion that some courts have found in addressing the elements of a separate document. It is easy to prepare a

separate document that recites the terms of the judgment without offering additional explanation or citation of authority. Forms 31 and 32 provide examples.

Rule 58 is amended, however, to address a problem that arises under Appellate Rule 4(a). Some courts treat such orders as those that deny a motion for new trial as a "judgment," so that appeal time does not start to run until the order is entered on a separate document. Without attempting to address the question whether such orders are appealable, and thus judgments as defined by Rule 54(a), the amendment provides that entry on a separate document is not required for an order disposing of the motions listed in Appellate Rule 4(a). The enumeration of motions drawn from the Appellate Rule 4(a) list is generalized by omitting details that are important for appeal time purposes but that would unnecessarily complicate the separate document requirement. As one example, it is not required that any of the enumerated motions be timely. Many of the enumerated motions are frequently made before judgment is entered. The exemption of the order disposing of the motion does not excuse the obligation to set forth the judgment itself on a separate document. And if disposition of the motion results in an amended judgment, the amended judgment must be set forth on a separate document.

Rule 58(b) discards the attempt to define the time when a judgment becomes "effective." Taken in conjunction with the Rule 54(a) definition of a judgment to include "any order from which an appeal lies," the former Rule 58 definition of effectiveness could cause strange difficulties in implementing pretrial orders that are appealable under interlocutory appeal provisions or under expansive theories of finality. Rule 58(b) replaces the definition of effectiveness with a new provision that defines the time when judgment is entered. If judgment

is promptly set forth on a separate document, as should be done when required by Rule 58(a)(1), the new provision will not change the effect of Rule 58. But in the cases in which court and clerk fail to comply with this simple requirement, the motion time periods set by Rules 50, 52, 54, 59, and 60 begin to run after expiration of 150 days from entry of the judgment in the civil docket as required by Rule 79(a).

A companion amendment of Appellate Rule 4(a)(7) integrates these changes with the time to appeal.

The new all-purpose definition of the entry of judgment must be applied with common sense to other questions that may turn on the time when judgment is entered. If the 150-day provision in Rule 58(b)(2)(B) - designed to integrate the time for post-judgment motions with appeal time - serves no purpose, or would defeat the purpose of another rule, it should be disregarded. In theory, for example, the separate document requirement continues to apply to an interlocutory order that is appealable as a final decision under collateral-order doctrine. Appealability under collateral-order doctrine should not be complicated by failure to enter the order as a judgment on a separate document - there is little reason to force trial judges to speculate about the potential appealability of every order, and there is no means to ensure that the trial judge will always reach the same conclusion as the court of appeals. Appeal time should start to run when the collateral order is entered without regard to creation of a separate document and without awaiting expiration of the 150 days provided by Rule 58(b)(2). Drastic surgery on Rules 54(a) and 58 would be required to address this and related issues, however, and it is better to leave this conundrum to the pragmatic disregard that seems its present fate. The present amendments do not seem to make matters worse, apart from one false appearance. If a pretrial order is

set forth on a separate document that meets the requirements of Rule 58(b), the time to move for reconsideration seems to begin to run, perhaps years before final judgment. And even if there is no separate document, the time to move for reconsideration seems to begin 150 days after entry in the civil docket. This apparent problem is resolved by Rule 54(b), which expressly permits revision of all orders not made final under Rule 54(b) "at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

New Rule 58(d) replaces the provision that attorneys shall not submit forms of judgment except on direction of the court. This provision was added to Rule 58 to avoid the delays that were frequently encountered by the former practice of directing the attorneys for the prevailing party to prepare a form of judgment, and also to avoid the occasionally inept drafting that resulted from attorney-prepared judgments. See 11 Wright, Miller & Kane, Federal Practice & Procedure: Civil 2d, Sec. 2786. The express direction in Rule 58(a)(2) for prompt action by the clerk, and by the court if court action is required, addresses this concern. The new provision allowing any party to move for entry of judgment on a separate document will protect all needs for prompt commencement of the periods for motions, appeals, and execution or other enforcement.

Changes Made After Publication and Comments. Minor style changes were made. The definition of the time of entering judgment in Rule 58(b) was extended to reach all Civil Rules, not only the Rules described in the published version - Rules 50, 52, 54(d)(2)(B), 59, 60, and 62. And the time of entry was extended from 60 days to 150 days after entry in the civil docket without a required separate document.

28 USCA Rule 59

TITLE 28 – APPENDIX

FEDERAL RULES OF CIVIL PROCEDURE

VII. JUDGMENT

-HEAD-

Rule 59. New Trials; Amendment of Judgments

-STATUTE-

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues

(1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and

(2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On Court's Initiative; Notice; Specifying Grounds. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Motion to Alter or Amend Judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

-SOURCE-

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Feb. 28, 1966, eff. July 1, 1966; Apr. 27, 1995, eff. Dec. 1, 1995.)

28 USCA Rule 60

TITLE 28 – APPENDIX

FEDERAL RULES OF CIVIL PROCEDURE

VII. JUDGMENT

-HEAD-

Rule 60. Relief from Judgment or Order

-STATUTE-

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is

based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., Sec. 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

-SOURCE-

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 2, 1987, eff. Aug. 1, 1987.)

28 USCA Rule 62

TITLE 28 – APPENDIX

FEDERAL RULES OF CIVIL PROCEDURE

VII. JUDGMENT

-HEAD-

Rule 62. Stay of Proceedings To Enforce a Judgment

-STATUTE-

(a) Automatic Stay; Exceptions – Injunctions, Receiverships, and Patent Accountings.

Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment.

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the

findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal.

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. If the judgment appealed from is rendered by a district court of three judges specially constituted pursuant to a statute of the United States, no such order shall be made except

(1) by such court sitting in open court or

(2) by the assent of all the judges of such court evidenced by their signatures to the order.

(d) Stay Upon Appeal.

When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in Favor of the United States or Agency Thereof.

When an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Stay According to State Law.

In any state in which a judgment is a lien upon the property of the judgment debtor and in which the judgment debtor is entitled to a stay of execution, a judgment debtor is entitled, in the district court held therein, to such stay as would be accorded the judgment debtor had the action been maintained in the courts of that state.

(g) Power of Appellate Court Not Limited.

The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of Judgment as to Multiple Claims or Multiple Parties.

When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

-SOURCE-

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961; Mar. 2, 1987, eff. Aug. 1, 1987.)

28 USCA Rule 79

TITLE 28 – APPENDIX

FEDERAL RULES OF CIVIL PROCEDURE

X. DISTRICT COURTS AND CLERKS

-HEAD-

Rule 79. Books and Records Kept by the Clerk and Entries Therein

-STATUTE-

(a) Civil Docket. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

b) Civil Judgments and Orders. The clerk shall keep, in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States may prescribe, a

correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

...

-SOURCE-

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Jan. 21, 1963, eff. July 1, 1963.)

NOTES OF ADVISORY COMMITTEE ON RULES - 1963 AMENDMENT

The terminology is clarified without any change of the prescribed practice. See amended Rule 58, and the Advisory Committee's Note thereto.

29 USC §1001

TITLE 29 – LABOR

CHAPTER 18 – EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I – PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle A – General Provisions

-HEAD-

Sec. 1001. Congressional Findings and Declaration of Policy

-STATUTE-

(a) Benefit plans as affecting interstate commerce and the Federal taxing power

The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans are carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in

the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries

It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for

fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance

It is hereby further declared to be the policy of this chapter to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

-SOURCE-

(Pub. L. 93-406, title I, Sec. 2, Sept. 2, 1974, 88 Stat. 832.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

29 USC §1022

TITLE 29 – LABOR

CHAPTER 18 – EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I – PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle B – Regulatory Provisions

Part 1 – Reporting and Disclosure

-HEAD-

Sec. 1022. Summary Plan Description

-STATUTE-

(a) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024(b) of this title. The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 1024(b)(1) of this title.

(b) The summary plan description shall contain the following information: The name and type of administration of the plan; in the case of a group health plan (as defined in section 1191b(a)(1) of this title), whether a health insurance issuer (as defined in section 1191b(b)(2) of this title) is responsible for the financing or administration (including payment of claims) of the plan and (if so) the name and

address of such issuer; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan including the office at the Department of Labor through which participants and beneficiaries may seek assistance or information regarding their rights under this chapter and the Health Insurance Portability and Accountability Act of 1996 with respect to health benefits that are offered through a group health plan (as defined in section 1191b(a)(1) of this title) and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 1133 of this title).

-SOURCE-

(Pub. L. 93-406, title I, Sec. 102, Sept. 2, 1974, 88 Stat. 841; Pub. L. 104-191, title I, Sec. 101(c)(2), Aug. 21, 1996, 110 Stat. 1951; Pub. L. 104-204, title VI, Sec. 603(b)(3)(C), Sept. 26, 1996, 110 Stat. 2938; Pub. L. 105-34, title XV, Sec. 1503(b), Aug. 5, 1997, 111 Stat. 1061.)

29 USC §1024

TITLE 29 – LABOR

CHAPTER 18 – EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I – PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle B – Regulatory Provisions

Part 1 – Reporting and Disclosure

-HEAD-

Sec. 1024. Filing and Furnishing of Information

-STATUTE-

(a) Filing of annual report with Secretary

(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing). The Secretary shall make copies of such annual reports available for inspection in the public document room of the Department of Labor.

(2) (A) With respect to annual reports required to be filed with the Secretary under this part, he may by regulation prescribe simplified annual reports for any pension plan which covers less than 100 participants.

(B) Nothing contained in this paragraph shall preclude the Secretary from requiring any information or data from any such plan to which this part applies where he finds such data or information is necessary to carry out the purposes of this

subchapter nor shall the Secretary be precluded from revoking provisions for simplified reports for any such plan if he finds it necessary to do so in order to carry out the objectives of this subchapter.

(3) The Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this subchapter, or may provide for simplified reporting and disclosure if he finds that such requirements are inappropriate as applied to welfare benefit plans.

(4) The Secretary may reject any filing under this section-

(A) if he determines that such filing is incomplete for purposes of this part; or

(B) if he determines that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 1023(a)(3)(A) or section 1023(a)(4)(B) of this title.

(5) If the Secretary rejects a filing of a report under paragraph (4) and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the Secretary makes his determination under paragraph (4) to reject the filing, and if the Secretary deems it in the best interest of the participants, he may take any one or more of the following actions –

(A) retain an independent qualified public accountant (as defined in section 1023(a)(3)(D) of this title) on behalf of the participants to perform an audit,

(B) retain an enrolled actuary (as defined in section 1023(a)(4)(C) of this title) on behalf of the plan participants, to prepare an actuarial statement,

(C) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this part, or

(D) take any other action authorized by this subchapter.

The administrator shall permit such accountant or actuary to inspect whatever books and records of the plan are necessary for such audit. The plan shall be liable to the Secretary for the expenses for such audit or report, and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(6) The administrator of any employee benefit plan subject to this part shall furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest summary plan description (including any summaries of plan changes not contained in the summary plan description), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

(b) Publication of summary plan description and annual report to participants and beneficiaries of plan Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary plan description, and all

modifications and changes referred to in section 1022(a) of this title –

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 1022 of this title which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in section 1022 of this title every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 1022(a) of this title (other than a material reduction in covered services or benefits provided in the case of a group health plan (as defined in section 1191b(a)(1) of this title)), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan. If there is a modification or change described in section

1022(a) of this title that is a material reduction in covered services or benefits provided under a group health plan (as defined in section 1191b(a)(1) of this title), a summary description of such modification or change shall be furnished to participants and beneficiaries not later than 60 days after the date of the adoption of the modification or change. In the alternative, the plan sponsors may provide such description at regular intervals of not more than 90 days. The Secretary shall issue regulations within 180 days after August 21, 1996, providing alternative mechanisms to delivery by mail through which group health plans (as so defined) may notify participants and beneficiaries of material reductions in covered services or benefits.

(2) The administrator shall make copies of the latest updated summary plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 1023(b)(3) of

this title and such other material (including the percentage determined under section 1023(d)(11) of this title) as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary,(!1) plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(c) Statement of rights

The Secretary may by regulation require that the administrator of any employee benefit plan furnish to each participant and to each beneficiary receiving benefits under the plan a statement of the rights of participants and beneficiaries under this subchapter.

(d) Cross references

For regulations respecting coordination of reports to the Secretaries of Labor and the Treasury, see section 1204 of this title.

-SOURCE-

(Pub. L. 93-406, title I, Sec. 104, Sept. 2, 1974, 88 Stat. 847; Pub. L. 99-272, title XI, Sec. 11016(b)(2), Apr. 7, 1986, 100 Stat. 273; Pub. L. 100-203, title IX, Sec. 9342(a)(2), Dec. 22, 1987, 101 Stat. 1330-371; Pub. L. 101-239, title VII, Sec. 7894(b)(3), (4), Dec. 19, 1989, 103 Stat. 2448; Pub. L. 104-191, title I, Sec. 101(c)(1),

Aug. 21, 1996, 110 Stat. 1951; Pub. L. 104-204, title VI, Sec. 603(b)(3)(D), Sept. 26, 1996, 110 Stat. 2938; Pub. L. 105-34, title XV, Sec. 1503(c)(1), (2)(A), (d)(1)-(3), Aug. 5, 1997, 111 Stat. 1062.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1022, 1023, 1027, 1029, 1132, 1185 of this title.

-FOOTNOTE-

(!1) So in original. Comma probably should not appear.

29 USC §1025

TITLE 29 – LABOR

CHAPTER 18 – EMPLOYEERETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I – PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle B – Regulatory Provisions

Part 1 – Reporting and Disclosure

-HEAD-

Sec. 1025. Reporting of participant's benefit rights

-STATUTE-

(a) Statement furnished by administrator to participants and beneficiaries

Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information –

(1) the total benefits accrued, and

(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) One-per-year limit on reports

In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) of this section during any one 12-month period.

(c) Individual statement furnished by administrator to participants setting forth information in administrator's Internal Revenue registration statement and notification of forfeitable benefits

Each administrator required to register under section 6057 of title 26 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of title 26. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

(d) Plans to which more than one unaffiliated employer is required to contribute; regulations

Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury

-SOURCE-

(Pub. L. 93-406, title I, Sec. 105, Sept. 2, 1974, 88 Stat. 849; Pub. L. 98-397, title I, Sec. 106, Aug. 23, 1984, 98 Stat. 1436; Pub. L. 101-239, title VII, Secs. 7891(a)(1), 7894(b)(5), Dec. 19, 1989, 103 Stat. 2445, 2448.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1026, 1132 of this title.

29 USC §1109

TITLE 29 – LABOR

CHAPTER 18 – EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I – PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle B – Regulatory Provisions

Part 4 – Fiduciary Responsibility

-HEAD-

Sec. 1109. Liability for Breach of Fiduciary Duty

-STATUTE-

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this subchapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

-SOURCE-

(Pub. L. 93-406, title I, Sec. 409, Sept. 2, 1974, 88 Stat. 886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1132 of this title.

29 USC §1131

TITLE 29 – LABOR

CHAPTER 18 – EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I – PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle B – Regulatory Provisions

Part 5 – Administration and Enforcement

-HEAD-

Sec. 1131. Criminal Penalties

-STATUTE-

Any person who willfully violates any provision of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than $100,000 or imprisoned not more than 10 years, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $500,000.

-SOURCE-

(Pub. L. 93-406, title I, Sec. 501, Sept. 2, 1974, 88 Stat. 891; Pub. L. 107-204, title IX, Sec. 904, July 30, 2002, 116 Stat. 805.)

REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1028 of this title.

29 USC §1132

TITLE 29 – LABOR

CHAPTER 18 – EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I – PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle B – Regulatory Provisions

Part 5 – Administration and Enforcement

-HEAD-

Sec. 1132. Civil Enforcement

-STATUTE-

(a) Persons empowered to bring a civil action

A civil action may be brought –

(1) by a participant or beneficiary –

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary

(A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or

(B) to obtain other appropriate equitable relief

(i) to redress such violations or

(ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary

(A) to enjoin any act or practice which violates any provision of this subchapter,

(B) to obtain other appropriate equitable relief

(i) to redress such violation or

(ii) to enforce any provision of this subchapter;

(6) by the Secretary to collect any civil penalty under paragraph (2), (4), (5), (6), or (7) of subsection (c) of this section or under subsection (i) or (l) of this section;

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 1169(a)(2)(A) of this title);

(8) by the Secretary, or by an employer or other person referred to in section 1021(f)(1) of this title,

(A) to enjoin any act or practice which violates subsection (f) of section 1021 of this title, or

(B) to obtain appropriate equitable relief

(i) to redress such violation or

(ii) to enforce such subsection; or

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan

constitutes a violation of part 4 of this title (!1) or the terms of the plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts.

(b) Plans qualified under Internal Revenue Code; maintenance of actions involving delinquent contributions

(1) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) (!2) of title 26 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) of this section with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if –

(A) requested by the Secretary of the Treasury, or

(B) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(2) The Secretary shall not initiate an action to enforce section 1145 of this title.

(3) The Secretary is not authorized to enforce under this part any requirement of part 7 against a health insurance issuer offering health insurance coverage in connection with a group health plan (as defined in section 1191b(a)(1) of this title).

Nothing in this paragraph shall affect the authority of the Secretary to issue regulations to carry out such part.

(c) Administrator's refusal to supply requested information; penalty for failure to provide annual report in complete form

(1) Any administrator

(A) who fails to meet the requirements of paragraph (1) or (4) of section 1166 (!2) of this title or section 1021(e)(1) of this title with respect to a participant or beneficiary, or

(B) who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation.

(2) The Secretary may assess a civil penalty against any plan administrator of up to $1,000 a day from the date of such plan administrator's failure or refusal to file the annual report required to be filed with the Secretary under section 1021(b)(4) (!2) of this title.

For purposes of this paragraph, an annual report that has been rejected under section 1024(a)(4) of this title for failure to provide material information shall not be treated as having been filed with the Secretary.

(3) Any employer maintaining a plan who fails to meet the notice requirement of section 1021(d) of this title with respect to any participant or beneficiary or who fails to meet the requirements of section 1021(e)(2) of this title with respect to any person may in the court's discretion be liable to such participant or beneficiary or to such person in the amount of up to $100 a day from the date of such failure, and the court may in its discretion order such other relief as it deems proper.

(4) The Secretary may assess a civil penalty of not more than $1,000 for each violation by any person of section 1021(f)(1) of this title.

(5) The Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary

under regulations prescribed pursuant to section 1021(g) of this title.

(6) If, within 30 days of a request by the Secretary to a plan administrator for documents under section 1024(a)(6) of this title, the plan administrator fails to furnish the material requested to the Secretary, the Secretary may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure (but in no event in excess of $1,000 per request). No penalty shall be imposed under this paragraph for any failure resulting from matters reasonably beyond the control of the plan administrator.

(7) The Secretary may assess a civil penalty against a plan administrator of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with section 1021(i) of this title. For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(8) The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1320b-14(c)(8) (!2) of title 42.

(d) Status of employee benefit plan as entity

(1) An employee benefit plan may sue or be sued under this subchapter as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service

upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter.

(e) Jurisdiction

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) Amount in controversy; citizenship of parties

The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) Attorney's fees and costs; awards in actions involving delinquent contributions

(1) In any action under this subchapter (other than an action described in paragraph (2)) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan –

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of –

(i) interest on the unpaid contributions, or

(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of title 26.

(h) Service upon Secretary of Labor and Secretary of the Treasury

A copy of the complaint in any action under this subchapter by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) of this section which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) of this section on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) Administrative assessment of civil penalty

In the case of a transaction prohibited by section 1106 of this title by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of title 26) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations which shall be consistent with section 4975(f)(5) of title 26) within 90

days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e)(1) of title 26.

(j) Direction and control of litigation by Attorney General

In all civil actions under this subchapter, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Jurisdiction of actions against the Secretary of Labor

Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this chapter, or to compel him to take action required under this subchapter, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

(l) Civil penalties on violations by fiduciaries

(1) In the case of –

(A) any breach of fiduciary responsibility under (or other violation of) part 4 of this subtitle by a fiduciary, or

(B) any knowing participation in such a breach or violation by any other person,

the Secretary shall assess a civil penalty against such fiduciary or other person in an amount equal to 20 percent of the applicable recovery amount.

(2) For purposes of paragraph (1), the term "applicable recovery amount" means any amount which is recovered from a fiduciary or other person with respect to a breach or violation described in paragraph (1) –

(A) pursuant to any settlement agreement with the Secretary, or

(B) ordered by a court to be paid by such fiduciary or other person to a plan or its participants and beneficiaries in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5) of this section.

(3) The Secretary may, in the Secretary's sole discretion, waive or reduce the penalty under paragraph (1) if the Secretary determines in writing that –

(A) the fiduciary or other person acted reasonably and in good faith, or

(B) it is reasonable to expect that the fiduciary or other person will not be able to restore all losses to the plan (or to provide the relief ordered pursuant to subsection (a)(9) of this section) without severe financial hardship unless such waiver or reduction is granted.

(4) The penalty imposed on a fiduciary or other person under this subsection with respect to any transaction shall be reduced by the amount of any penalty or tax imposed on such fiduciary or other person with respect to such transaction under subsection (i) of this section and section 4975 of title 26.

(m) Penalty for improper distribution

In the case of a distribution to a pension plan participant or beneficiary in violation of section 1056(e) of this title

by a plan fiduciary, the Secretary shall assess a penalty against such fiduciary in an amount equal to the value of the distribution. Such penalty shall not exceed $10,000 for each such distribution.

-SOURCE-

(Pub. L. 93-406, title I, Sec. 502, Sept. 2, 1974, 88 Stat. 891; Pub. L. 96-364, title III, Sec. 306(b), Sept. 26, 1980, 94 Stat. 1295; Pub. L. 99-272, title X, Sec. 10002(b), Apr. 7, 1986, 100 Stat. 231; Pub. L. 100-203, title IX, Secs. 9342(c), 9344, Dec. 22, 1987, 101 Stat. 1330-372, 1330-373; Pub. L. 101-239, title II, Sec. 2101(a), (b), title VII, Secs. 7881(b)(5)(B), (j)(2), (3), 7891(a)(1), 7894(f)(1), Dec. 19, 1989, 103 Stat. 2123, 2438, 2442, 2445, 2450; Pub. L. 101-508, title XII, Sec. 12012(d)(2), Nov. 5, 1990, 104 Stat. 1388-573; Pub. L. 103-66, title IV, Sec. 4301(c)(1)-(3), Aug. 10, 1993, 107 Stat. 376; Pub. L. 103-401, Secs. 2, 3, Oct. 22, 1994, 108 Stat. 4172; Pub. L. 103-465, title VII, Sec. 761(a)(9)(B)(ii), Dec. 8, 1994, 108 Stat. 5033; Pub. L. 104-191, title I, Sec. 101(b), (e)(2), Aug. 21, 1996, 110 Stat. 1951, 1952; Pub. L. 104-204, title VI, Sec. 603(b)(3)(E), Sept. 26, 1996, 110 Stat. 2938; Pub. L. 105-34, title XV, Sec. 1503(c)(2)(B), (d)(7), Aug. 5, 1997, 111 Stat. 1062; Pub. L. 107-204, title III, Sec. 306(b)(3), July 30, 2002, 116 Stat. 783.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1136, 1140 of this title.

-FOOTNOTE-

(!1) So in original. Probably should be "subtitle".

(!2) See References in Text note below.

29 USC §1133

TITLE 29 – LABOR

CHAPTER 18 – EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I – PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle B - Regulatory Provisions

Part 5 - Administration and Enforcement

-HEAD-

Sec. 1133. Claims Procedure

-STATUTE-

In accordance with regulations of the Secretary, every employee benefit plan shall –

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

-SOURCE-

(Pub. L. 93-406, title I, Sec. 503, Sept. 2, 1974, 88 Stat. 893.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1022 of this title.

29 USC §1140

TITLE 29 – LABOR

CHAPTER 18 – EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I – PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle B – Regulatory Provisions

Part 5 – Administration and Enforcement

-HEAD-

Sec. 1140. Interference with Protected Rights

-STATUTE-

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C. 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

-SOURCE-

(Pub. L. 93-406, title I, Sec. 510, Sept. 2, 1974, 88 Stat. 895.)

42 USC §1981

TITLE 42 – THE PUBLIC HEALTH AND WELFARE

CHAPTER 21 – CIVIL RIGHTS

SUBCHAPTER I – GENERALLY

-HEAD-

Sec. 1981. Equal Rights under the Law

-STATUTE-

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce Contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

-SOURCE-

(R.S. Sec. 1977; Pub. L. 102-166, title I, Sec. 101, Nov. 21, 1991, 105 Stat. 1071.)

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 102-166 provided that: "The Congress finds that –

"(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

"(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

"(3) legislation is necessary to provide additional protections against unlawful discrimination in employment."

PURPOSES OF 1991 AMENDMENT

Section 3 of Pub. L. 102-166 provided that: "The purposes of this Act [see Short Title of 1991 Amendment note above] are –

"(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

"(2) to codify the concepts of 'business necessity' and 'job related' enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

"(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

"(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination."

LEGISLATIVE HISTORY FOR 1991 AMENDMENT

Section 105(b) of Pub. L. 102-166 provided that: "No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this Act [see Short Title of 1991 Amendment note above] that relates to Wards Cove - Business necessity/cumulation/alternative business practice."

CONSTRUCTION OF 1991 AMENDMENT

Section 116 of title I of Pub. L. 102-166 provided that: "Nothing in the amendments made by this title [enacting section 1981a of this title and amending this section, sections 1988, 2000e, 2000e-1, 2000e-2, 2000e-4, 2000e-5, 2000e-16, 12111, and 12112 of this title, and section 626 of Title 29, Labor] shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law."

ALTERNATIVE MEANS OF DISPUTE RESOLUTION

Section 118 of title I of Pub. L. 102-166 provided that: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title [enacting section 1981a of this title and amending this section, sections 1988, 2000e, 2000e-1, 2000e-2, 2000e-4, 2000e-5, 2000e-16, 12111, and 12112 of this title, and section 626 of Title 29, Labor].".

42 USC §1983

TITLE 42 – THE PUBLIC HEALTH AND WELFARE

CHAPTER 21 – CIVIL RIGHTS

SUBCHAPTER I – GENERALLY

-HEAD-

Sec. 1983. Civil Action for Deprivation of Rights

-STATUTE-

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

-SOURCE-

(R.S. Sec. 1979; Pub. L. 96-170, Sec. 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, title III, Sec. 309(c), Oct. 19, 1996, 110 Stat. 3853.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437c-1, 1988, 1997e of this title.

42 USC §1988

TITLE 42 – THE PUBLIC HEALTH AND WELFARE

CHAPTER 21 – CIVIL RIGHTS

SUBCHAPTER I – GENERALLY

-HEAD-

Sec. 1988. Proceedings in Vindication of Civil Rights

-STATUTE-

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of

the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

-SOURCE-

(R.S. Sec. 722; Pub. L. 94-559, Sec. 2, Oct. 19, 1976, 90 Stat. 2641; Pub. L. 96-481, title II, Sec. 205(c), Oct. 21, 1980, 94 Stat. 2330; Pub. L. 102-166, title I, Secs. 103, 113(a), Nov. 21, 1991, 105 Stat. 1074, 1079; Pub. L. 103-141, Sec. 4(a), Nov. 16, 1993, 107 Stat. 1489; Pub. L. 103-322, title IV, Sec. 40303, Sept. 13, 1994, 108 Stat. 1942; Pub. L. 104-317, title III, Sec. 309(b), Oct. 19, 1996, 110 Stat. 3853; Pub. L. 106-274, Sec. 4(d), Sept. 22, 2000, 114 Stat. 804.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1981a, 1997e, 3602 of this title.